

# City of Detroit


## CITY COUNCIL

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**TO:** The Honorable Detroit City Council

**FROM:** David Whitaker   
City Council Research and Analysis Staff

**DATE:** April 7, 2006

**RE: SIGNED DOCUMENTS RECEIVED BY THE DETROIT/WAYNE  
COUNTY PORT AUTHORITY**

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Per Your Honorable Body's request, attached are the three documents received in the City Council Research and Analysis Division's office (RAD) from the Detroit/Wayne County Port Authority. RAD is in the process of comparing and reviewing them with the previous documents related to this matter. They are:

1. Master Concession Agreement by and between the Detroit/Wayne County Port Authority and the Ambassador Port Company.
2. Agreement relating to Springing Interest and Master Concession Agreement by and between the City of Detroit and the Ambassador Port Company.
3. Subconcession Agreement between Ambassador Port Company and Nicholson Terminal and Dock Company.

Attachments (3)

**MASTER CONCESSION AGREEMENT**

by and between

**THE DETROIT/WAYNE COUNTY PORT AUTHORITY**

and

**THE AMBASSADOR PORT COMPANY**

TABLE OF CONTENTS

	<u>Page</u>
1. Definitions.....	2
1.1 Incorporation of Recitals.....	2
1.2 Prior Defined Terms.....	2
2. Administration and Operation.....	7
2.1 Grant of Concession and Facility Work.....	7
2.2 Scope of Discretion in the Performance of Facility Work.....	9
2.3 The Authority's Oversight and Cooperation.....	9
2.4 Employment of Facility Operator.....	10
2.5 Waiver of Conflict.....	11
3. The Authority Requirements in Connection With Operation of Port.....	11
3.1 Facility Open to the Public.....	11
3.2 Hours of Operation.....	11
3.3 Standards of Service.....	11
3.4 Safety and Security Rules.....	11
3.5 Port Security.....	12
3.6 Government Reports.....	12
3.7 Prior Non-Compliance with Laws.....	12
3.8 Procurement of Licenses and Permits.....	12
3.9 Environmental Compliance.....	12
3.10 Hazardous Cargo.....	12
3.11 Conduct of Operations/Independent Contractor Status.....	12
3.12 Right of Entry.....	13
3.13 Protection of Authority's Title in Premises.....	13
3.14 Uses Prohibited.....	13
3.15 Waste and Nuisance Prohibited.....	13
4. Construction and Improvements.....	13
4.1 Construction of Improvements.....	13
4.2 Submission of Plans for Modifications.....	13
4.3 The Authority Funding for Construction or Improvements.....	14
4.4 Master Concessionaire Funding for Construction or Improvements.....	14
4.5 Authority Title Retention.....	14
4.6 Master Concessionaire Real Estate.....	14
5. Application of Revenues Derived from the Facility.....	14
5.1 Payment for Concession Services.....	14
5.2 Collection and Distribution of Capital Receipts.....	15
5.3 Other Payments.....	15
6. Warranties and Representations.....	16

6.1	Warranty of Qualifications.....	16
6.2	General Warranty by the Authority.....	16
6.3	Warranty by the Parties of Environmental Conditions.....	16
6.4	Warranty re: Master Plan.....	17
7.	Term and Termination of Operating Agreement.....	17
7.1	Term of this Agreement.....	17
7.2	Return of the Facility.....	17
8.	Insurance.....	18
8.1	Liability Insurance.....	18
8.2	Property Insurance.....	18
8.3	Right of Master Concessionaire or Authority to Purchase.....	19
8.4	Survival of Provisions.....	19
8.5	Blanket Insurance Policies.....	19
8.6	Waiver of Subrogation.....	20
9.	Repairs and Destruction of Improvements.....	20
9.1	Maintenance of Improvements.....	20
9.2	Damage to and Destruction of Improvements.....	20
10.	Master Concessionaire's Duty to Keep Premises Free of Liens.....	20
11.	Prohibition of Involuntary Assignment; Effect of Bankruptcy or Insolvency.....	21
11.1	Prohibition of Involuntary Assignment.....	21
11.2	Effect of Bankruptcy, Insolvency, Etc.....	21
12.	Assignment and Transfer by Master Concessionaire.....	21
12.1	Prior Consent by the Authority to Assignment and Transfer of this Agreement.....	21
12.2	Master Concessionaire's Right to Subcontract.....	22
13.	Default.....	22
13.1	Event of Default by Master Concessionaire.....	22
13.2	Authority Rights and Remedies Pursuant to an Event of Default by Master Concessionaire.....	22
13.3	The Authority's Right to Perform.....	23
13.4	Event of Default by the Authority.....	23
13.5	Remedies for Master Concessionaire Pursuant to an Authority Event of Default.....	23
13.6	Waiver.....	23
13.7	Default Interest.....	24
14.	Effect of Eminent Domain.....	24
14.1	Effect of Total Condemnation.....	24
14.2	Effect of Partial Condemnation.....	24

15.	Right of First Refusal .....	24
16.	Port Authority Activities .....	25
17.	Tax Treatment.....	25
18.	Miscellaneous .....	26
18.1	Execution of this Agreement .....	26
18.2	Collection of Prior Accounts Receivable .....	26
18.3	Applicable Law.....	26
18.4	Notices .....	26
18.5	Captions .....	27
18.6	Attachments .....	27
18.7	Modifications to this Agreement .....	27
18.8	Successors and Assigns .....	27
18.9	Force Majeure.....	27
18.10	Dispute Resolution Procedures.....	27
18.11	Remedies Cumulative.....	28
18.12	Perpetuities Savings Clause.....	28
18.13	Expenses of Enforcement .....	29

**MASTER CONCESSION AGREEMENT**

**THIS AGREEMENT** is made and effective this 27th day of June, 2005 (this "**Agreement**") by and between The Detroit/Wayne County Port Authority (the "**Authority**"), a Michigan public body corporate and politic, and the Ambassador Port Company, a Michigan corporation ("**Master Concessionaire**"). Collectively, the Authority and Master Concessionaire are referred to as the "**Parties**".

**WITNESSETH:**

**WHEREAS**, the Authority is the owner of certain real property consisting of approximately 3.6425 acres of improved land commonly known as 4461 West Jefferson Avenue, Detroit, Michigan, along the Detroit River (the "**Smaller Parcel**") and real property consisting of approximately 31.31 acres located at, and commonly known as, 4300, 4461, and 4500 West Jefferson Avenue, Detroit, Michigan (the "**Larger Parcel**"). Collectively, the Smaller Parcel and Larger Parcel are referred to as the "**Premises**";

**WHEREAS**, the Authority is a statutorily established entity funded by the State of Michigan, Wayne County and the City of Detroit (the "**City**"), in part through the issuance of tax-exempt bonds;

**WHEREAS**, the Authority was established for the purpose of developing and operating a "**Port Facility**" (as defined in Section 120.102 of the Port the Authority Act MCL 120, et seq.) in the City and intends to develop, maintain, expand and otherwise operate a Port Facility (including the real and personal property associated therewith, the "**Facility**") at the Premises and in the areas around the Premises when and if acquired and incorporated in the Facility;

**WHEREAS**, subject to the Authority's oversight, the Authority desires to grant a concession in the Premises and the Facility (as more particularly defined in Section 1.2 hereof the "**Concession**") to a Master Concessionaire for the purpose of assisting the Authority with the operation of the Facility;

**WHEREAS**, subject to the terms and conditions of this Agreement, Master Concessionaire desires to accept the Concession;

**WHEREAS**, Master Concessionaire believes that in order for the Concession to be profitable to Master Concessionaire and achieve the Concession Purpose (as defined herein), future expansion of the Facility to include areas outside of the Premises will be necessary;

**WHEREAS**, both Parties expect that the Facility will continue to expand to include other properties proximate to the Premises ("**Expansion Properties**") and by the investment of private and public funds in the Facility (including possible borrowings from Master Concessionaire or from Master Concessionaire's affiliates or the issuance by the Authority of tax exempt bonds) and that concurrently with the addition of Expansion Properties to the Facility, the Concession and the definition of Premises shall expand to include any Expansion Properties;

WHEREAS, the Authority has received an exemption from real estate taxes for the Premises from the Tax Assessor for the City;

WHEREAS, the Parties believe that the financial success of the Facility depends on the Authority continuing to maintain the exemption of the Premises from real estate taxes and obtaining additional real estate tax exemptions for any Expansion Properties;

WHEREAS, concurrently with the execution of this Agreement, the Authority has executed a Promissory Note (the "**Promissory Note**") in favor of Master Concessionaire in the original principal amount of Two Million Ninety-Seven Thousand, Eight Hundred Sixty Three Dollars and Thirty Three Cents (\$2,097,863.33) which includes a provision for the possible advance of future amounts by Master Concessionaire for the purposes of paying certain expenses relating to the expansion, maintenance, operation and improvement of the Facility;

WHEREAS, concurrently with the Authority's acquisition of its interest in the Premises, the City received a deed for a remainder interest in the Premises that will vest if at any time this agreement is terminated for any reason other than Master Concessionaire's default on Master Concessionaire's obligations hereunder, including, without limitation, as a result of a breach by the Authority of its obligations hereunder or failure to pay amounts due under the Promissory Note; and

WHEREAS, as provided for in the Remainder Agreement (the "**Remainder Agreement**") entered into between the City and Master Concessionaire concurrently herewith, and approved by the Authority, the City has agreed to enforce its remainder interest in the Premises if the occasion so arises and following termination of the Authority's interest in the Premises, to either honor this Agreement and the Promissory Note as the City's obligation or enter into replacement agreements therefore with Master Concessionaire.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

1.1 Incorporation of Recitals. The foregoing Recitals are incorporated herein and this Agreement shall be interpreted in accordance therewith.

1.2 Prior Defined Terms. All capitalized terms as used in this Agreement, unless otherwise defined, shall have the same meaning stated below:

"*Applicable Laws*" shall mean all existing and future applicable laws, rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any governmental authority, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction; (a) pertaining to the construction of improvements on the Premises or relating to the Facility or the use, occupancy, ownership or operation of the Facility, (b) in any way limiting the use or enjoyment of the Facility, including

without limitation, Environmental Laws, Wetlands Regulations, Wildlife Protection Acts, Archeological Protection Acts, all building, zoning and fire codes and all permits, certificates of occupancy, licenses, authorizations and regulations relating to the Premises or the Facility, (c) governing the Authority, acts of the Authority or the Authority's agents, employees, contractors, or concessionaires; and (d) otherwise relating to the Facility, the Premises and the use of the Premises as a Port Facility.

"*Archeological Protection Acts*" shall mean all Applicable Laws relating to the regulation, maintenance or preservation of archeological conditions.

"*Authority*" shall have the meaning specified in the introductory clause hereof.

"*Authority Defaults*" shall mean any breach of a representation or warranty of the Authority, any failure of the Authority to perform obligations, make payments, or satisfy covenants provided for herein, a termination or modification of this Agreement imposed by reason of a change in Applicable Law relating to the Authority's statutory powers or obligations, any default by the Authority under the Promissory Note or any additional circumstances and events specified as constituting Authority Defaults hereunder.

"*Baseline Assessment*" that certain draft Baseline Environmental Assessment dated August 20, 2003, prepared by Conestoga-Rovers & Associates, supplemented by the Draft Review of Environmental Conditions dated September 14, 2004 prepared by Freudenthal & Elkowitz Consulting Group, Inc.

"*Bona Fide Offer*" shall have the meaning specified in Section 15 of this Agreement.

"*Bonds*" shall mean those certain outstanding bonds of the Detroit Port Development Corporation. Detroit Port Development Corporation Modified First Mortgage Revenue Bonds, captioned Series A.

"*Budget*" shall mean the operating budget for the Facility as approved by the Authority for each year of the Concession Term.

"*Business Day*" shall mean any day other than Saturday, Sunday or any other day that federally chartered banks located in Michigan are closed for business.

"*Capital Receipts*" shall mean net revenues (after payment of transfer taxes, conveyance fees, brokerage commissions, sale expenses including attorneys' fees, recording costs, title insurance fees, due diligence expenses and other customary seller costs) earned by the Authority in connection with the sale, transfer, assignment, grant of licenses or easements or the letting of the Premises or the Authority's interest in the Premises, and any improvements, equipment or other personal property included as part of the Facility.

"*City*" shall have the meaning specified in the second (2<sup>nd</sup>) recital hereto.

"*Concession*" shall mean the exclusive right to operate and manage the Facility and to perform the Facility Work on the Authority's behalf pursuant to the terms and conditions hereof.



"*Concession Payments*" shall mean the amounts payable to Master Concessionaire pursuant to Section 5.1 hereof.

"*Concession Purpose*" shall mean the purpose for which the Authority was formed which was in part, to acquire, improve, enlarge, extend, operate, maintain and finance port districts in the City.

"*Concession Term*" shall mean a period commencing on the effective date of this Agreement and ending on June 26, 2030 as such period shall be shortened or extended pursuant to the terms hereof.

"*Default Rate*" shall mean an annual rate of interest equal to six hundred (600) basis points in excess of the Floating Rate, but no greater than the maximum allowed by law.

"*Detroit Port Development Corporation*" or "*DPDC*" shall mean the issuer of the bonds.

"*Environmental Laws*" shall mean all federal, state and local laws, statutes, ordinances, codes and regulations relating to environmental protection including those so defined in or regulated under any of the following: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act, a/k/a the Clean Water Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S. Code Section 9601, et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 1801, et seq. (the Hazardous Materials Transportation Act) and the Michigan Natural Resources and Environmental Protection Act (NEPRA) 1994 PA 451.

"*Event of Default*" shall mean the continuation of a Master Concessionaire Default in the case of Master Concessionaire, or an Authority Default, in the case of the Authority, beyond applicable cure periods, if any.

"*Expansion Properties*" shall have the meaning specified in the seventh (7<sup>th</sup>) recital hereto.

"*Facility*" shall have the meaning specified in the third (3<sup>rd</sup>) recital hereto.

"*Facility Operation Agreement*" shall mean that certain Facility Operation Agreement by and between Master Concessionaire and Facility Operator dated June 27, 2005 and any other agreement between Master Concessionaire and any Facility Operator pursuant to which Master Concessionaire subcontracts for the performance of all or part of the Concession.

"*Facility Operation Standard*" shall mean the standard by which each Facility Operator shall operate the Facility, which shall mean: (a) in accordance with reasonable business judgment; (b) in accordance with the Concession Purpose; (c) in a manner that will not result in the Authority being personally liable to third parties in excess of the Gross Receipts payable to the Authority pursuant to Section 5.1 and Capital Receipts payable to the Authority pursuant to Section 5.2 that the Authority can reasonably expect to receive from the operation of the Facility;

and (d) with a general goal of paying all creditors to the Facility, keeping the Facility in operation and providing some residual return to the Authority.

"*Facility Operator*" shall mean Nicholson Terminal & Dock Company and any other party designated by Master Concessionaire and approved by the Authority to perform the obligations relating to the Concession. At any given time there may be more than one Facility Operator.

"*Facility Work*" shall have the meaning specified in Section 2.1 hereof.

"*First Offer*" shall have the meaning specified in Section 15 hereof.

"*Floating Rate*" shall mean three hundred (300) basis points over the yield to maturity on United States Treasury Notes having a remaining term to maturity as near as possible to five (5) years as such yield is published in The Wall Street Journal (or any successor thereto) on the day of determination, but in no event shall the total be less than six percent (6%) per annum, nor greater than the maximum allowed by law. If at any time during the Concession Term the rate on five (5) year United States Treasury Notes is no longer published, the Floating Rate shall be determined by using a comparable index reasonably selected by Master Concessionaire with such index adjusted upwards or downward so that the rate on such substitute index is equivalent to the Floating Rate on the last day that the Floating Rate was established using five (5) year United States Treasury Notes (or any successor index). For example, if five (5) year United States Treasury Notes were yielding five percent (5%) and the selected substitute index is the London Interbank Offered Rate which at the time was yielding four percent (4%), then so long as the London Interbank Offered Rate was used as the substitute rate, the Floating Rate would be four hundred (400) basis points over the London Interbank Offered Rate.

"*Gross Receipts*" shall mean all revenues other than Capital Receipts derived by the Authority, Master Concessionaire, any Facility Operator, and any subtenant or licensee of the Facility (without duplication of any amounts already included in the definition of Gross Receipts) from operations relating to the Facility, including, but not limited to, use fees, any Refunding Amounts and any revenues from the sale of goods or services made on or about, or otherwise originating from, the Premises from any source whatsoever; adjusted by the deduction of the following, provided that separate records are maintained for such deductions: (a) credits and refunds to customers for merchandise or services purchased from the Facility; (b) amounts of any separately stated federal, state and local sales or use taxes imposed upon a Facility Operator's customers and collected by a Facility Operator; or (c) charges paid to a Facility Operator by its customers for the mailing of purchased items but only to the extent of the actual mailing cost thereof. Gross Receipts shall include all mail or telephone orders filled at or from the Premises, all deposits not refunded to purchasers, and all orders taken in and from the Premises, whether or not such orders are filled elsewhere.

No deduction shall be made from Gross Receipts by reason of any credit loss sustained or financing discount that may be applicable by reason of the acceptance or use of credit cards or by reason of any other credit arrangements. If any charge customarily made by a Facility Operator for goods and services is not assessed, charged or collected for any reason, then the amount of

that Facility Operator's customary charge therefor shall nevertheless be included in determining Gross Receipts.

Gross Receipts shall be computed and audited in accordance with the provisions of this Agreement.

In the event of any conflict between the provisions of this Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Agreement shall control, and the provisions of this Agreement shall not be limited by such principles or standards.

"*Hazardous Cargo*" shall mean Hazardous Materials and any other materials, such as waste, arms, explosives, and similar products, that present unusual safety or health risks in connection with their storage, transportation or disposal or that are subject to reporting, permitting or other governmental laws, ordinances or regulations relating to their storage, shipping, or disposal by reason of their potential negative impacts on the health or physical welfare of people, animals or plants.

"*Hazardous Materials*" shall mean any substance or material that is described as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the Environmental Laws, and includes asbestos, petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum products, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity.

"*Larger Parcel*" shall have the meaning specified in the first (1<sup>st</sup>) recital hereto.

"*Master Concessionaire Default*" shall mean any breach of a representation or warranty of Master Concessionaire, any failure of Master Concessionaire to perform obligations and covenants provided for herein, and any additional circumstances and events specified as constituting Master Concessionaire Defaults hereunder.

"*Master Plan*" shall mean the plan for the physical future of the Facility as described in Section 2.1 hereof.

"*Operating Procedures*" shall mean the procedures for operation of the Facility as approved by the Authority from time to time.

"*Oversight Expenses*" shall have the meaning specified in Section 5.1 of this Agreement.

"*Plan Submittal Date*" shall mean January 15 of each year of the Concession Term or the next Business Day thereafter.

"*Port Facility*" shall have the meaning specified in the third (3<sup>rd</sup>) recital hereto.

"*Premises*" shall have the meaning specified in the first (1<sup>st</sup>) recital hereto and is legally described in Exhibit A.

"*Pricing Schedule*" shall mean the pricing list and Use Fees for products, services and other activities at the Facility as approved by the Authority for each year of the Concession Term as specified in Section 2.1 hereof.

"*Promissory Note*" shall have the meaning specified in the tenth (10<sup>th</sup>) recital hereto.

"*Remainder Agreement*" shall have the meaning specified in the twelfth (12<sup>th</sup>) recital hereto.

"*Refunding Amounts*" shall mean all amounts payable by any Facility Operator to Master Concessionaire as consideration for Master Concessionaire's entry into the Facility Operation Agreement, including without limitation, Nicholson Dock and Port Company's agreement to pay to Master Concessionaire a percentage of amounts generated by Nicholson Dock and Port Company from the stevedoring operation at the port facility (the "**Ecorse Port**") located south of the Premises legally described in Exhibit B.

"*Smaller Parcel*" shall have the meaning specified in the first (1<sup>st</sup>) recital hereto.

"*Use Fees*" shall mean the fees, tariffs or charges imposed by Master Concessionaire or Facility Operator on users of the Facility and other activities relating to the Facility that generate Gross Receipts.

"*Wetlands Regulations*" shall mean all Applicable Laws relating to the regulation, preservation, maintenance and creation of wetlands areas.

"*Wildlife Protection Acts*" shall mean the Endangered Species Act of 1973, as provided for in 16 USCS §§ 1531 et seq., as amended from time to time, together with any other federal, state or local wildlife, vegetation or habitat protection acts.

## 2. Administration and Operation.

2.1 Grant of Concession and Facility Work. Subject to the oversight rights of the Authority provided for herein, for the Concession Term the Authority hereby grants the Concession to Master Concessionaire for the Concession Purpose. Master Concessionaire shall have the exclusive right to exercise the Concession. In exchange for the grant of the Concession and the right to receive the Concession Payment, Master Concessionaire agrees to perform the following "**Facility Work**":

a. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before the Plan Submittal Date of each year of the Concession Term, present and recommend for approval by the Authority a master plan (the "**Master Plan**") including all supplements and amendments detailing directions to Master Concessionaire for the development, construction, expansion, contraction, operation, maintenance and improvements to the Facility, including maps, profiles and other data and descriptions necessary to set forth the location and character of the work to be approved by the Authority and undertaken by Master Concessionaire on the Authority's behalf; including supplemental budgets, construction schedules, architectural

drawings and plans and specifications for improvements when eventually completed and as filed with and approved by the Authority after the Plan Submittal Date;

b. to negotiate contracts for provision of materials, services, property sale or acquisition, borrowings, utilities and other matters relating to the performance of the Facility Work including, without limitation, execution of any activities that are part of the approved Master Plan;

c. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before the Plan Submittal Date of each year of the Concession Term, present a proposed operating budget for the Facility for the upcoming calendar year in substantially the form and containing the information detailed in the budget approved concurrently herewith (the "Budget") to the Authority for the Authority's review and approval;

d. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before Plan Submittal Date of each year of the Concession Term recommend pricing of products, services and other activities occurring at the Facility in substantially the form and containing the information detailed in the pricing schedule approved concurrently herewith (the "Pricing Schedule") to the Authority for the Authority's review and approval;

e. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before the Plan Submittal Date of each year of the Concession Term, recommend to the Authority for the Authority's review and approval, operational policies for the Facility for the upcoming year including hours of operation, scope of services to be provided, rules for users of the Facility and such other general operational matters as to which Master Concessionaire would like to have the Authority's guidance in substantially the form and containing the information detailed in the operating procedures approved concurrently herewith ("Operating Procedures");

f. present to the Authority, as and when Master Concessionaire reasonably determines necessary amendments to the Master Plan, the Pricing Schedule, the Budget, the Operating Procedures or other items relating to the Facility and approved by the Authority, but requiring modification by reason of subsequent events, new information or operational experience;

g. manage all processes associated with modifying, developing, expanding, constructing, rehabilitating, improving, subleasing, maintaining, repairing or otherwise managing the physical condition of the Facility in accordance with the Master Plan and the Facility Operation Standard, including without limitation, dredging ship channels, turning basins and filling and grading land therefor;

h. operate and manage all aspects of the Facility in accordance with the provisions of this Agreement, the Master Plan, the Pricing Schedule, the Budget, the Operating Procedures, and the Concession Purpose and otherwise in accordance with Applicable Laws and the Facility Operation Standard;

i. in conjunction with the Facility Operator, executing contracts as an independent contractor for the provision of services at the Facility, the purchase and sale of goods and services relating to the Facility, and otherwise relating to the operation and maintenance of the Facility and the performance of the other aspects of the Facility Work;

j. in conjunction with the Facility Operator, procuring and maintaining permits, licenses, and approvals for operation of and modification to the Facility.

2.2 Scope of Discretion in the Performance of Facility Work. In connection with the performance of the Facility Work, Master Concessionaire shall exercise reasonable business judgment consistent with the objectives of maximizing Concession Payments. From time to time Master Concessionaire may authorize a Facility Operator to perform Facility Work in a manner divergent from the Budget, the Master Plan, the Price Schedule or the Operating Procedures but only in those specific instances where Master Concessionaire determines, in Master Concessionaire's reasonable business judgment, that such actions conform to the Facility Operation Standard and are either special one time events or will be included in the next Budget, Master Plan, Price Schedule or the Operating Procedures, to be presented to the Authority for approval on the next Plan Submittal Date.

2.3 The Authority's Oversight and Cooperation. The Authority shall cooperate with Master Concessionaire in connection with Master Concessionaire's performance of the Facility Work and agrees to the following for purposes of facilitating the Facility Work:

a. The Authority shall not unreasonably withhold the Authority's consent to any Budget, Master Plan, Price Schedule, Operating Procedures or other proposals or requests of Master Concessionaire relating to the exercise of the Concession, with reasonableness determined by the following criteria and in the following order: (1) consistency with Applicable Law and the Concession Purpose; (2) not imposing financial obligations on the Authority of a recourse which will unreasonably reduce the Authority's net income (after all expenses and taxes, if any) from the operation of the Facility; (3) not imposing financial obligations on the Authority that cannot reasonably be satisfied out of Gross Receipts and Capital Receipts that the Authority can reasonably expect to receive pursuant to Section 5.1 and 5.2 during the Concession Term; and (4) reasonably consistent with the Facility Operation Standard.

b. The Authority shall respond to all requests for approval of the Master Plan, Budget, Pricing Schedule, Operating Procedures and any requested modifications thereto within thirty (30) days of Master Concessionaire's request, subject to the understanding that the Authority's failure to deny any request for approval in writing within such thirty (30) day period shall be deemed consent to the extent permitted by Applicable Laws.

c. The Authority shall execute such documents and grant such approvals as Master Concessionaire shall reasonably request to allow Master Concessionaire and each Facility Operator to exercise the Concession to the extent that

such powers can be designated to a third party performing acts on behalf of the Authority pursuant to Applicable Laws and Section 2.3(a) above. To the extent that such powers cannot be designated to a third party, the Authority shall undertake such acts as shall be reasonably requested by Master Concessionaire to allow Master Concessionaire to exercise the Concession in a manner consistent with this Agreement.

d. The Authority shall keep the Master Concessionaire informed of all potential defaults or breaches, or threats or notifications of default or breaches of agreements or contracts impacting the Facility or Premises or any current or future leases, permits, licenses or easements relating to the Facility or Premises; and to allow the Master Concessionaire to take any action necessary on behalf of, and at the expense of, the Authority in order to sustain any current or future leases, permits, licenses or easements relating to the Facility or to carry out the purpose of this Agreement.

e. The Authority shall not pledge, sell, assign, let, lien, option, mortgage, hypothecate, encumber, or otherwise convey interests in the Premises, the Facility, revenues generated from the Facility or the Authority's interest in the Premises at any time during the Concession Term without Master Concessionaire's prior consent, such consent to be granted or denied in Master Concessionaire's sole discretion.

f. If, for any reason, the Authority refuses to approve modifications to the Master Plan, Budget, the Pricing Schedule or the Operating Procedures, the foregoing shall continue in effect unmodified (and renewed for the next year) until such matter is resolved pursuant to Section 18.10 herein.

g. If any state, federal, or local governmental agency issues any written or unwritten notices of violation or non-compliance, orders of withdrawal or cessation, or any other citations relating to the Facility, the Authority shall immediately notify Master Concessionaire of the governmental action, and follow any non-written notification with written notification within two (2) Business Days.

h. The parties acknowledge that the Premises provided by the Authority is exempt from real estate taxes, and that they have entered into this Agreement based on the assumption that neither the Authority nor Master Concessionaire shall be responsible for the payment of any real estate, personal property, user or operations taxes relating to the Premises or the Facility.

i. In order to exercise its oversight obligations, the Authority is required to maintain an office on the Premises or the Expansion Properties. The location and operation of the Authority's office shall not interfere with the Facility Work and the Concession. All expenses related to the operation of the Authority's office shall be borne by the Authority.

2.4 Employment of Facility Operator. The Authority confirms that it has reviewed the Facility Operation Agreement with Nicholson Terminal and Dock Company and hereby approves of Master Concessionaire's entry into that Facility Operation Agreement pursuant to which Nicholson Terminal and Dock Company, as a Facility Operator will agree to

perform certain aspects of the Facility Work. From time to time, Master Concessionaire shall be entitled to replace Nicholson Terminal and Dock Company, as a Facility Operator in accordance with the terms and conditions of the Facility Operation Agreement with Nicholson Terminal and Dock Company. The Authority shall be entitled to approve or disapprove of any substitute or new Facility Operator proposed by Master Concessionaire, such approval not to be unreasonably withheld. If the Authority fails to deny approval in writing of any Facility Operator proposed by Master Concessionaire within thirty (30) days of Master Concessionaire's request, such consent shall be deemed granted to the extent that such an assumption is permissible under Applicable Law.

2.5 Waiver of Conflict. The Authority understands and acknowledges that Master Concessionaire or its affiliates owns real property in and around the Premises that Master Concessionaire is interested in incorporating into the operations of the Facility and has agreed to perform the Facilities Work in part for the purpose of maximizing the value of such other properties and the profits to current and future businesses operating thereon. Preference shown to such other properties owned by Master Concessionaire or its affiliates over the Facility shall not constitute a breach of any duty of Master Concessionaire hereunder or a breach of the Facility Operation Standard. The Authority, hereby waives any claim for breach of fiduciary duty or other cause of action in connection with any actions taken by Master Concessionaire or any Facility Operator whereby other property owned or controlled by them receives disproportionate benefit to the Facility.

3. The Authority Requirements in Connection With Operation of Port.

3.1 Facility Open to the Public. Master Concessionaire shall at all times operate the Facility as a public Port Facility with open access to all users, as approved by the Port Authority.

3.2 Hours of Operation. Master Concessionaire shall provide services at such times as are convenient for the public, are customary to the operations of a Port Facility and have been approved by the Port Authority as part of the Operating Procedures.

3.3 Standards of Service. Master Concessionaire shall maintain and operate, or cause a Facility Operator to maintain and operate, the Facility and otherwise perform the Facility Work in a reasonably safe manner and with a reasonable standard of care necessary to make the Facility generally available for public use, consistent with the plans approved by the Port Authority.

3.4 Safety and Security Rules. Master Concessionaire and each Facility Operator shall advise and instruct their employees and agents to abide by and observe the safety and security rules for their operations, work and services specified in the approved Operating Procedures. Master Concessionaire or a Facility Operator will file all necessary reports and other documents relating to the ownership, occupation, maintenance, expansion, sale or operation of the Facility, with all applicable governmental authorities when required to do so by Applicable Laws with copies provided to the Authority as appropriate.



3.5 Port Security. Master Concessionaire shall file or cause to be filed such reports and undertake such actions as shall be required under applicable law for purposes of causing the Premises and the operations of the Facility to comply with Applicable Laws relating to securing the Facility from terrorist activities, vandals and criminal acts. Notwithstanding the foregoing, the parties understand and agree that such acts are the result of the actions of third parties and outside the control of either the Authority of Master Concessionaire. Master Concessionaire shall have no liability to the Authority by reason of the occurrence of such third party actions.

3.6 Government Reports. The Authority shall assist in procuring all federal, state, county and City permits, licenses, authorizations and other governmental consents necessary for the Authority, Master Concessionaire and each Facility Operator to maintain and operate the Facility as a Port Facility.

3.7 Prior Non-Compliance with Laws. Master Concessionaire, the Facility Operator(s) and their agents, employees, vendors and concessionaires shall not be responsible for any noncompliance with Applicable Laws, rules, regulations, specifications, approved operational plans, and ordinances of the host municipality, the State of Michigan and any other applicable federal laws prior to the date of this Agreement.

3.8 Procurement of Licenses and Permits. Except as the Parties otherwise agree, Master Concessionaire and any Facility Operator shall procure, pay for and maintain, in its own name or in the name of a Facility Operator, all federal, state, and/or local governmental identification numbers, license(s), plans(s), and permit(s) necessary, convenient, and/or incidental to do the Facility Work and to keep the Facility operating. Master Concessionaire and each Facility Operator or contractors shall comply and abide with all of the terms and conditions of said licenses, plans, and permits.

3.9 Environmental Compliance. Each Facility Operator shall be responsible for compliance with Environmental Laws for the Facility (or the portion of the Facility that they are operating) after the effective date of this Agreement except to the extent that responsibility for compliance has been retained by the Authority. Except to the extent that Master Concessionaire acts as a Facility Operator, Master Concessionaire shall not, by reason of this Agreement, assume any liability for Hazardous Materials at the Facility or any breach of Environmental Laws relating to the Facility or operations thereon.

3.10 Hazardous Cargo. Each Facility Operator shall be responsible for all federal and state authority reporting and compliance related to the handling of Hazardous Cargo at the Facility pursuant to that Facility Operator's Facility Operation Agreement.

3.11 Conduct of Operations/Independent Contractor Status. Each Facility Operator shall perform, render and carry out at all times the Facility Work as independent contractors. Each Facility Operator shall, at all times, have and exercise exclusive direction and control of the Facility Work allocated to them pursuant to each Facility Operation Agreement and exercise exclusive control over its individual work force and labor relations. While Master Concessionaire and/or the Facility Operator may, from time to time, receive advisory communications pertaining to the operation of the Facility from the Authority, compliance by a

Facility Operator with such communications shall not effect their status as an independent contractor.

3.12 Right of Entry. The Authority shall, upon reasonable notice to Master Concessionaire and the Facility Operator operating on the applicable portion of the Facility, retain entry and inspection privileges to the Facility. The Authority shall coordinate with Master Concessionaire and the applicable Facility Operator to arrange a mutually agreeable time so as to minimize any interference to Master Concessionaire's operations or the operations of the Facility Operator.

3.13 Protection of Authority's Title in Premises. Master Concessionaire shall not suffer or permit the Premises, or any portion thereof, to be used by the public, as such, without restriction or in such manner as might impair the Authority's title to the Premises or any portion thereof, or in such manner as may reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

3.14 Uses Prohibited. Master Concessionaire shall comply with all legal requirements with respect to the Premises and the Facility. Master Concessionaire shall use the Premises and Facility in a manner that will not cause a cancellation of any insurance policy covering the Premises and Facility, or any part thereof.

3.15 Waste and Nuisance Prohibited. During the Concession Term, Master Concessionaire shall comply with all Applicable Laws affecting the Premises, the breach of which might result in any penalty to the Authority, or forfeiture of the Authority's interest in the Premises, or restriction against the Authority's interest in the Premises or the Authority's or City's adjoining land.

#### 4. Construction and Improvements.

4.1 Construction of Improvements. Consistent with the Master Plan approved by the Authority and as part of the Facility Work, Master Concessionaire may construct, demolish and maintain any facilities, improvements, and buildings on the Premises reasonably necessary for the operation of the Facility. Master Concessionaire or its agent shall be responsible for obtaining any required building or other permits for such work. Such items shall be approved or objected to in accordance with the standards, process and procedures for approval of the Master Plan set out in Section 2.1, with the exception of the requirement that they be submitted by the Plan Submittal Date.

4.2 Submission of Plans for Modifications. Master Concessionaire agrees to submit to the Authority, in advance, all plans respecting any material modifications of or additions to the Premises and/or Facility, as part of the Master Plan. Any and all significant modifications and/or alterations to the Premises and/or Facility shall require the written consent of the Authority. Construction budgets, construction schedules, plans and specifications and architectural drawings shall be subject to written approval of the Authority and incorporated into the Master Plan as necessary, but shall not be required as a condition to submittal of the Master Plan as of the Plan Submittal Date.

4.3 The Authority Funding for Construction or Improvements. Upon coordination with, or at the request of, Master Concessionaire, the Authority shall reasonably cooperate to use its bonding authority to authorize the issuance of bonds to provide for the construction of improvements and to otherwise further develop, or to expand the Facility or Premises. Expansion of the Facility to include Expansion Properties shall only occur in accordance with the Master Plan and by means of a written supplement to this Agreement under which Master Concessionaire and the Authority agree on the terms and conditions on which the Expansion Properties are to be incorporated into the Facility.

4.4 Master Concessionaire Funding for Construction or Improvements. Master Concessionaire, may, using its own private funds, construct improvements and further develop or expand the Facility or Premises in accordance with the Master Plan. Should Master Concessionaire with the approval of the Port Authority use its own private funds to construct improvements, further develop, or expand the Facility or Premises on real estate it does not own, all such costs shall be deemed advances of principal under the Promissory Note and added to the outstanding principal balance of the Promissory Note. From time to time as requested by Master Concessionaire, the Authority shall confirm such advances and execute and allonge to the Promissory Note confirming the increased principal amount thereof.

4.5 Authority Title Retention. The Authority shall own the title to any real estate parcels and Facility improvements that are constructed on property acquired using proceeds obtained from the issuance of the Authority authorized bonds.

4.6 Master Concessionaire Real Estate. Pursuant to the Master Plan and as otherwise provided for in this Agreement, Master Concessionaire may, from time to time, contribute Expansion Properties to the Facility by conveying such real estate to the Authority. The Authority shall own any additional real estate added to the Facility as an Expansion Property in fee simple determinable, subject to the possibility of reversion to Master Concessionaire if at any time the Master Concession Agreement terminates.

5. Application of Revenues Derived from the Facility.

5.1 Payment for Concession Services. Although the Authority's primary purpose for entering into this Agreement is to cause a dormant Port Facility to resume operations, the parties acknowledge and agree that the Authority will need to be compensated for the out of pocket and administrative costs that the Authority will incur in connection with the ongoing oversight and administration required of the Authority under the terms of this Agreement ("Oversight Expenses"). The parties further acknowledge and agree that the actual dollar value of Oversight Expenses is difficult to determine because of the length of the Concession Term and the nature of the Oversight Expenses as administrative expenses and not necessarily out of pocket expenses. Therefore, the parties stipulate that Master Concessionaire shall reimburse the Authority for Oversight Expenses as follows and without modification during the Concession Term.

a. On the behalf of the Authority, Master Concessionaire shall require each Facility Operator to collect, and provide written confirmation of the receipt of, all Gross Receipts earned in connection with the Facility.

b. In order to compensate the Authority for its Oversight Expenses, on or before the thirtieth (30th) day following the end of each calendar quarter, Master Concessionaire shall pay the Authority two and one-half percent (2 1/2%) of the Gross Receipts received in that expired quarter, less the following deductions to be applied in the following order:

- (1) All outstanding interest that shall have accrued during the preceding quarter on the Promissory Note at the Floating Rate;
- (2) any default interest due on the Promissory Note;
- (3) any interest that accrued during prior quarters but that was added to the principal amount of the Promissory Note by reason of there being insufficient Gross Receipts available to pay the accrued interest; and
- (4) any amount due Master Concessionaire from the Authority under the terms of this Agreement.

5.2 Collection and Distribution of Capital Receipts. On behalf of the Authority, Master Concessionaire shall collect or require the Facility Operator(s) to collect all Capital Receipts earned in connection with the Facility. Concurrently with the collection of Capital Receipts, Master Concessionaire shall apply Capital Receipts in the following order:

- a. First, to satisfy all amounts due and owing under any loan or other financing related to the Capital Receipt and consented to in writing by Master Concessionaire;
- b. Second, to pay Master Concessionaire any accrued but unpaid interest outstanding under the Promissory Note, including default interest;
- c. Third, to satisfy the outstanding principal balance under the Promissory Note;
- d. Fourth, to pay any amounts then due any Facility Operator(s);
- e. Fifth, to pay any other amounts then due Master Concessionaire hereunder;
- f. With all residual Capital Receipts payable to the Authority.

5.3 Other Payments.

- a. The Authority has the right to pay all or part of the outstanding principal balance of the Promissory Note at any time.

b. The Master Concessionaire will reimburse the Authority's unamortized bond issuance costs and costs related to completing this transaction, the total not to exceed Four-Hundred Thousand Dollars (\$400,000.00). Within ten (10) days of the execution of this Agreement, the Authority will present to the Master Concessionaire an itemized list of claimed costs, with appropriate justification, as requested. Within thirty (30) days of the receipt of the Authority's justified claim, the Master Concessionaire will make payment. Any disputes concerning this reimbursement will be resolved in accordance with Section 18.10 of this Agreement.

6. Warranties and Representations.

6.1 Warranty of Qualifications. Master Concessionaire represents and warrants to the Authority that Master Concessionaire is qualified and capable, and has adequate financial resources, to fulfill and perform its obligations under this Operating Agreement.

6.2 General Warranty by the Authority. Recognizing that the Parties have not had possession of the Premises nor have they had the opportunity to conduct a comprehensive due diligence, they nevertheless warrant that they are unaware of the Premises presently being the subject of:

- a. any administrative action, notice of violation, cessation order or action in any quasi-judicial or judicial body of competent jurisdiction;
- b. any final order, writ, judgment, injunction, decree, determination, award or other final order or applicable decision of any quasi-judicial, judicial, or government entity which restricts or affects the operation of the Facility;
- c. any investigation into the violation of any Applicable Law; or
- d. any other potential civil action which might have a material effect on Master Concessionaire's financial interests as a Facility Operator.

6.3 Warranty by the Parties of Environmental Conditions. The Baseline Assessment evaluated and documented the environmental conditions of the Larger Parcel of property. Within forty-five (45) days of the effective date of this Agreement, the Master Concessionaire shall cause the completion of a final baseline assessment for the entire Facility. Until a baseline assessment that incorporates the Smaller Parcel is completed, the Smaller Parcel will not be included in the operation of the Facility. The Parties covenant, represent and warrant that to the best of their knowledge, except as provided in the Baseline Assessment:

- a. the Facility operating on the Larger Parcel does not violate any applicable federal, state, or local law, statute, ordinance, rule, regulation, order, notice requirement or other Applicable Law pertaining to the collection, transportation, storage, treatment, discharge, release, processing, handling, or disposal of Hazardous Materials.
- b. no written notice has been served on the Authority from any person or governmental entity regarding any existing, pending investigation or inquiry

nor are there any threatened investigations or inquiries related to violations under any Applicable Laws, or any claims for corrective action, remedial obligations or contribution for removal costs or damages under any Applicable Laws or the designation of the Authority as a potentially responsible party under Applicable Laws.

c. there have been no releases of Hazardous Materials generated, stored, treated or disposed of on the Larger Parcel or on property adjacent to or proximate to the Premises.

#### 6.4 Warranty re: Master Plan.

The Authority represents and warrants its Development Plan was duly adopted and approved by all applicable governmental authorities after notice and hearing in accordance with Section 120.123 of the Port the Authority Act, MCL §120.123.

### 7. Term and Termination of Operating Agreement.

7.1 Term of this Agreement. This Agreement shall be in effect for the Concession Term. The Concession Term shall be subject to three (3) successive twenty-five (25) year extension options to be exercised at the election of Master Concessionaire by delivery to the Authority of at least six (6) months prior written notice of Master Concessionaire's election to extend. Each extension option may only be subject to exercise if, during the Concession Term and each twenty-five (25) year extension period, at least Two Million Dollars (\$2,000,000.00) in "Capital Investment" has been made in the Premises by the Authority, Master Concessionaire, a Facility Operator or other party. Capital Investment shall mean the cost, as noted in third party invoices, of physical improvements made to the Premises (including any Expansion Properties). The following costs may be included in Capital Investment: all hard costs of physical improvements including labor and materials as well as soft costs, including design, engineering, architectural and legal expenses, permitting costs, impact fees, licensing costs, plan review fees, all other governmental expenses, fees and costs associated with the physical improvement of the Premises including any Expansion Properties, interest payable to third parties and attributable to construction periods, oversight fees payable to any third party construction or site manager and other fees and expenses that would typically be funded by a construction lender financing comparable physical improvements. Capital Investment shall only include costs relating to physical improvements that will remain on the Premises or Expansion Properties following the termination of the Master Concession Agreement.

7.2 Return of the Facility. Master Concessionaire shall, upon the termination of this Agreement, leave intact, undisturbed, and in good repair, less normal wear and tear, all fixtures, improvements, and installations, as well as all items comprising the same, pertaining to the Facility paid for by the Authority on the Authority property. Master Concessionaire agrees to remove all of its personal property from the Facility within sixty (60) calendar days from the date of the termination of this Agreement.

8. Insurance.8.1 Liability Insurance.

a. Master Concessionaire shall cause each Facility Operator to purchase liability insurance (any auto, including owned autos, non-owned autos and hired autos), and commercial general liability insurance protecting the Facility Operator, Master Concessionaire, and the Authority from and against any and all liabilities arising out of or relating to the Facility Operator's use or occupancy of, or the conduct of operations on, the Premises or in connection with the Facility. Limits of liability thereunder shall be in such reasonable amounts as the Authority shall approve as part of each Facility Operation Agreement. The policy shall be in a form and with a company or companies reasonably acceptable to Master Concessionaire and the Authority and with contractual liability coverage for the Facility Operator's covenants to and indemnification of Master Concessionaire and the Authority under the Facility Operation Agreement, if any. This insurance shall provide that it is the primary insurance with respect to any other valid and collectible insurance Master Concessionaire or the Authority may possess, including any self-insured retention or deductible Master Concessionaire or the Authority may have, and that any such other insurance Master Concessionaire or the Authority do possess shall be considered excess insurance only.

b. If the nature of the Facility Operator's use of the Premises or business operations on the Premises or in connection with the Facility are such as to place any or all of the Facility Operator's employees under the coverage of workers' compensation or similar statutes, Master Concessionaire shall also cause the Facility Operator to purchase workers' compensation or similar insurance with a company or companies acceptable to Master Concessionaire and the Authority affording the required statutory coverage and containing the requisite statutory limits.

c. The declarations page(s) from all insurance policies obtained by Facility Operator in accordance with the provisions of this Agreement shall be furnished to Master Concessionaire and the Authority at least fifteen (15) days prior to the commencement of any construction or installation on the Premises, whichever first occurs, and at least thirty (30) days prior to the expiration or termination of the coverage provided under any prior policy. Such declarations page(s) shall indicate that Master Concessionaire and the Authority as additional insured parties. Each declarations page shall indicate that such insurance coverage will not be reduced or canceled without having first given at least thirty (30) days' prior written notice to Master Concessionaire and the Authority.

8.2 Property Insurance.

a. Master Concessionaire shall cause each Facility Operator, at the Facility Operator's sole cost and expense, to obtain and maintain in effect through the term of this Agreement, for the benefit of Facility Operator, Master Concessionaire, the Authority, their lenders from time to time, and the trustee of certain of the Authority's outstanding revenue bonds, as their interests may appear, property insurance on all

improvements, furnishings, fixtures, trade fixtures, signs, equipment and other personal property hereafter installed on the Premises or incorporated into the Facility, on a replacement cost basis, in such form and with such company or companies as Master Concessionaire shall approve, with a deductible which does not exceed five percent (5%) of such replacement cost.

b. At least fifteen (15) days prior to the commencement of any construction or installation on the Premises and at least thirty (30) days prior to the expiration of any policy or policies theretofore provided by Facility Operator under this Agreement, Master Concessionaire shall cause each Facility Operator to furnish Master Concessionaire and the Authority the declarations page(s) from the insurance policy or policies evidencing such coverage, and such declarations page(s) shall indicate that Facility Operator, Master Concessionaire, the Authority, their lenders from time to time, and the trustee of any of Authority's outstanding revenue bonds are named as loss payees as their interests may appear, and that the policy or policies will not be canceled or reduced without thirty (30) days' prior written notice thereof to Master Concessionaire and the Authority.

c. Master Concessionaire shall require that each Facility Operator, on behalf of itself and its insurance carrier(s), waives any and all rights of recovery which Facility Operator may have against Master Concessionaire or the Authority for any loss of or damage to property each may suffer as a result of any fire or other peril normally insured against under a policy of property insurance.

8.3 Right of Master Concessionaire or Authority to Purchase. Master Concessionaire shall cause each Facility Operator to pay all of the premiums for insurance required to be maintained hereunder and to deliver proof of such insurance to the Authority. Upon the failure of Master Concessionaire to cause a Facility Operator to obtain such insurance in the names and in the amounts herein called for, to pay the premiums therefor, or to deliver proof of insurance to the Authority, the Authority shall be entitled, but shall have no obligation, to obtain such insurance and pay the premiums therefor, which premiums shall be repayable to the Authority upon written demand therefor. However, before taking such action, if commercially available, the Authority will consult with Master Concessionaire and identify the perceived inadequacies of Master Concessionaire's or any Facility Operator's insurance coverage. In no event shall Master Concessionaire or any Facility Operator be liable to the Authority for damages in excess of the insurance premiums that the Authority pays to purchase replacement insurance. If insurance is not maintained by Master Concessionaire or the Facility Operator, such failure shall not constitute an independent cause of action and shall not result in liability of Master Concessionaire to the Authority or any other party for uninsured damages that may occur.

#### 8.4 Survival of Provisions.

The provisions of this Section 8 shall survive the expiration or earlier termination of this Agreement.

8.5 Blanket Insurance Policies. Notwithstanding anything to the contrary contained in this Article, Master Concessionaire's obligations to carry or to cause a Facility



Operator to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Master Concessionaire or its Facility Operator(s), as long as the coverage afforded the Authority shall not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Agreement by reason of the use of such blanket policy of insurance, and all other requirements of this Article shall be satisfied.

8.6 Waiver of Subrogation. The Authority and Master Concessionaire waive all rights against each other, and against any of their respective officers, employees, agents, successors and assigns and any other parties named as insureds or additional insureds in such policies, on account of any loss or damage caused by risks covered by insurance under this Article to the extent such party is covered by that insurance. The Authority and Master Concessionaire intend that the required policies of insurance shall protect all the parties insured and provide primary and exclusive coverage for the losses and damages caused by risks covered by insurance under this Article. Each insurance policy carried by the Authority, Master Concessionaire and each Facility Operator shall provide that the insurance company waives its right of recovery by way of subrogation against the Authority, Master Concessionaire or the Facility Operator and their respective officers, employees, agents, successors and assigns in accordance with this paragraph.

9. Repairs and Destruction of Improvements.

9.1 Maintenance of Improvements. Master Concessionaire shall, without any expense to the Authority, cause the Premises and Facility to be kept and maintained, including without limitation, all structural, nonstructural, interior and exterior portions thereof, in good, sanitary and neat order, condition and repair. Master Concessionaire shall, except as specifically provided herein, restore, repair, replace or rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause whatsoever. Master Concessionaire shall also comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Premises and Facility or the other improvements thereon, or any activity or condition on or in such Premises.

9.2 Damage to and Destruction of Improvements. The damage, destruction, or partial destruction of any building or any other improvements which are on the Premises shall not release or diminish Master Concessionaire's obligations hereunder, except as hereinafter expressly provided. In case of damage to or destruction of buildings or other improvements on the Premises, Master Concessionaire shall, at its expense, subject to the availability of adequate insurance proceeds, promptly repair and restore the same to a condition as good as that which existed prior to such damage or destruction. Without limiting such obligations of Master Concessionaire, it is agreed that, so long as Master Concessionaire is not then in default hereunder, and subject to the rights of any mortgagee of the Premises, the proceeds of any insurance covering such damage or destruction shall be made available to Master Concessionaire for such repair or replacement.

10. Master Concessionaire's Duty to Keep Premises Free of Liens. Except as provided in this Agreement, Master Concessionaire shall keep the Premises, and every part thereof, the buildings and any other improvements at any time located thereon free and clear of

any and all construction liens for or arising out of or in connection with work or construction by, for or permitted by Master Concessionaire on or about the Premises, and any obligations of any kind incurred by Master Concessionaire, and at all times shall promptly and fully pay and discharge any and all claims on which any such lien may or could be based, and shall indemnify the Authority and all of the Premises, against all such liens and claims of liens and suits or other proceedings pertaining thereto. Notwithstanding the foregoing, Master Concessionaire may contest any such lien in good faith and may permit same to remain unsatisfied and undischarged during the period of such contest and any appeal therefrom; provided that if the Authority so requires, Master Concessionaire shall deposit with an escrow agent, cash or a cash equivalent surety bond in form and substance satisfactory to the Authority, in an amount sufficient to satisfy such lien, including any interest and penalties thereon.

11. Prohibition of Involuntary Assignment; Effect of Bankruptcy or Insolvency.

11.1 Prohibition of Involuntary Assignment. Neither this Agreement, nor the estate of the Authority or Master Concessionaire, nor any interest of the Authority or Master Concessionaire hereunder in the Premises or any improvements thereon, shall be subject to involuntary assignment, transfer or sale by operation of law in any manner whatsoever, and any such attempt at involuntary assignment, transfer or sale shall be void and of no effect.

11.2 Effect of Bankruptcy, Insolvency, Etc. Without limiting the generality of the provisions of the preceding Section, the Authority and Master Concessionaire agree that the following events shall constitute an Event of Default by the bankrupt party:

- a. if any proceedings under federal bankruptcy law shall be commenced by or against either Party and if commenced against either Party, shall not be dismissed within sixty (60) days; or
- b. if either Party becomes insolvent or makes an assignment for the benefit of its creditors; or
- c. if a receiver is appointed in any proceeding or action to which either Party is a party, with authority to take possession or control of all or any part of the Premises or the business conducted thereon, and such receiver is not discharged within a period of thirty (30) days after his appointment; or
- d. if any involuntary assignment prohibited by the provisions of the preceding Section shall occur.

12. Assignment and Transfer by Master Concessionaire.

12.1 Prior Consent by the Authority to Assignment and Transfer of this Agreement. Master Concessionaire shall not assign or transfer this Agreement, without the prior written consent of the Authority, which consent shall not be unreasonably withheld. Consent to an assignment or transfer shall not be deemed to be a consent to any subsequent assignment or transfer. In connection with any approved assignment or transfer of this Agreement, the Authority shall release Master Concessionaire from its obligations under this Agreement to the

extent of such assignment or transfer. Following an approved Assignment, all references therein to the Master Concessionaire shall mean the assignee entity. If Master Concessionaire assigns its rights under this Agreement without the consent of the Authority, the sole impact shall be that Master Concessionaire shall continue to be liable hereunder for all obligations of Master Concessionaire hereunder.

12.2 Master Concessionaire's Right to Subcontract. Notwithstanding the foregoing, and subject to the limited approval rights specified in Section 2.4 hereof, Master Concessionaire shall be entitled to subcontract all or a portion of its rights or duties under this Agreement to any Facility Operator.

### 13. Default.

13.1 Event of Default by Master Concessionaire. In addition to any other Master Concessionaire Defaults or Events of Default specified herein, the following shall constitute Master Concessionaire Defaults:

a. Master Concessionaire fails to make any payment on the due date thereof in accordance with this Agreement and fails to cure such delinquency within fifteen (15) days after written notice thereof has been received by Master Concessionaire; or

b. Master Concessionaire breaches any covenant of this Agreement other than the covenant for the payment of Oversight Expenses and fails to cure such breach within thirty (30) days after written notice thereof has been given by the Authority to Master Concessionaire.

13.2 Authority Rights and Remedies Pursuant to an Event of Default by Master Concessionaire. Following an Event of Default by Master Concessionaire, the Authority shall be entitled to exercise the following, and only the following, rights and remedies:

a. Pursue a claim for actual damages, but expressly excluding consequential damages, punitive damages or other monetary damages, in excess of actual damages, and subject to the additional condition that such damages shall be payable solely from future amounts due Master Concessionaire from the related Facility Operator hereof and without offset against any amounts otherwise due from Master Concessionaire or any other Facility Operator to the Authority hereunder;

b. Enforce the obligations of Master Concessionaire by means of the equitable remedies of specific performance and injunction, but subject to the condition that such equitable remedies shall not be exercised in such a manner inconsistent with the objective of keeping the Facility open as a Port Facility available for use by the general public and operated by a Facility Operator, nor shall such remedies be caused so as to cause a breach by Master Concessionaire of any Master Concessionaire's obligations under any Facility Operating Agreement;

c. If, in addition to an Event of Default, Master Concessionaire is declared bankrupt or ceases to exist, the Authority may terminate this Agreement; and

d. Notwithstanding the provisions of this Section 13.2, recover reasonable attorneys' fees and enforcement expenses in accordance with Section 18.13 below.

13.3 The Authority's Right to Perform. Upon the occurrence of an Event of Default caused by the continuation of a Master Concessionaire Default, the Authority may, but shall not be required to, do or perform or cause to be done or performed such act or thing, entering upon the Premises for such purposes, if the Authority shall elect, and the Authority shall not be held liable or in any way responsible for any loss, inconvenience, annoyance or damage resulting to Master Concessionaire on account thereof, except as a result of the Authority's, its agents', or employees' negligent acts or omissions in the performance of such act. Any act or thing done by the Authority pursuant to the provisions of this Section shall not be construed as a waiver of any such default by Master Concessionaire, or as a waiver of any covenant, term or condition herein contained, or of the requirement of performance thereof, or of any other right or remedy of the Authority, hereunder or otherwise. However, the Authority shall not be entitled to recover from Master Concessionaire any amounts expended in connection with the exercise by Authority of the rights specified in this Section 13.3 in excess of those amounts recoverable pursuant to Section 13.2(a) above.

13.4 Event of Default by the Authority. In addition to any other Authority Defaults or Events of Default specified herein, the following shall constitute Authority Defaults:

a. The Authority fails to perform a required duty or obligation as stated in this Agreement and fails to cure such delinquency within fifteen (15) days after written notice thereof has been given by Master Concessionaire to the Authority; or

b. The Authority breaches any representation or warranty of the Authority hereunder.

13.5 Remedies for Master Concessionaire Pursuant to an Authority Event of Default. If an Authority Default continues beyond applicable cure periods, Master Concessionaire shall be entitled to any and all remedies available at law or in equity provided that Master Concessionaire's right to recover monetary damages shall be limited to the Authority's rights and interests in: (a) the Facility; (b) the Premises; (c) the Gross Receipts; (d) the Capital Receipts; (e) any personal property located thereon or related to the Premises and the Facility; (f) any deposits, bonds or other security posted by the Authority and relating to the Facility or work being performed in connection with the Facility or leases or subleases of the Facility; and (g) any a right of offset against any other amounts due the Authority pursuant to this Agreement. In addition, the Master Concessionaire shall be entitled to enforce its rights under the Remainder Agreement and cause the City to take possession of the Premises so as to terminate the Authority's interest in the Premises and the Facility.

13.6 Waiver. The waiver by either Party of, or the failure of that Party to take action with respect to, any breach of any term, covenant or condition herein contained shall not

be deemed to be a waiver of such term, covenant or condition, or of subsequent breach of the same, or of any other term, covenant or condition herein contained. The subsequent performance or acceptance of payment hereunder by a Party shall not be deemed a release of any term, covenant or condition of this Agreement, other than the failure of that Party to perform or pay the particular performance or payment so accepted, regardless of that Party's knowledge of such preceding breach at the time of acceptance of such performance or payment.

13.7 Default Interest. Amounts due and unpaid hereunder by either of the Parties to the other and delinquent for more than thirty (30) days, shall accrue interest at the Default Rate, compounding monthly, until paid in full.

14. Effect of Eminent Domain.

14.1 Effect of Total Condemnation. If the entire Premises and Facility shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, or shall with the consent of Master Concessionaire, be conveyed by the Authority to any public or quasi-public authority under a threat of such appropriation or taking, this Agreement shall terminate and expire as of the date of such taking or conveyance, payment shall be prorated to such date, and Master Concessionaire and the Authority shall thereupon be released from any liability thereafter accruing hereunder. All proceeds with respect to the Premises shall be divided between the Authority and Master Concessionaire as Capital Receipts to the extent that such proceeds relate to property owned by the Authority, or paid one hundred percent (100%) to Master Concessionaire to the extent that such proceeds relate to property in which Master Concessionaire has a reversionary interest.

14.2 Effect of Partial Condemnation. If the taking consists of less than the whole of the Premises or Facility, there will be no termination of this Agreement if Master Concessionaire determines, in its sole discretion, that its operation on the Premises can continue in substantially the same manner as before the taking. If Master Concessionaire determines that it cannot continue to operate on the Premises as herein required, either the Authority or Master Concessionaire may terminate this Agreement, and if this Agreement is terminated, the proceeds will be applied in the same way as under the preceding Section. If this Agreement is not terminated, then Master Concessionaire shall continue operations to the extent possible, and consistent with this Agreement, identify replacement improvements to be constructed by Master Concessionaire at the expense of the Authority. Subject to the rights of any mortgagee of the Premises, the proceeds of the partial condemnation shall be used first to pay for such construction, and any excess will go to the Authority and Master Concessionaire as their interests may appear as specified in the preceding paragraph.

15. Right of First Refusal. The Authority shall not sell the Premises or any interest in the Premises during the Concession Term except in accordance with this Section. Should the Authority receive from a bona fide, arm's-length purchaser not affiliated in any way with the Authority, a bona fide written offer ("**Bona Fide Offer**") to purchase all or any part of the Premises and should the Authority desire to accept the Bona Fide Offer, it shall first make a written offer (the "**First Offer**") to sell the Premises to Master Concessionaire at the price and upon the terms and conditions set forth in the Bona Fide Offer. The First Offer shall be accompanied by a copy of the Bona Fide Offer. Master Concessionaire may accept the First

Offer by service of notice of acceptance to the Authority on or before the thirtieth (30<sup>th</sup>) day next following delivery of the First Offer to Master Concessionaire plus any earnest money delivered therewith. Failure of Master Concessionaire to respond during said thirty (30) day period shall be deemed a conclusive waiver of Master Concessionaire's right to accept the First Offer. If the First Offer is accepted, the purchase and sale shall be closed at the principal office of the Authority on the date set forth in the Bona Fide Offer or at such other place, time and date as the Authority and the Master Concessionaire may mutually agree upon, by payment of the Purchase Price against conveyance of the Premises subject to the terms of the First Offer. If Master Concessionaire fails to fully and timely accept the First Offer as herein provided, the Authority may make the bona fide sale of the Premises to the bona fide prospective purchaser making the Bona Fide Offer in accordance with the terms thereof; provided, however, that if the Authority fails to consummate the sale of the Premises in accordance with the Bona Fide Offer, Master Concessionaire's right of first refusal described in this Section shall remain in full force and effect. Master Concessionaire shall be entitled to require the Authority to execute a memorandum of this right of First Offer in recordable form and record that right of First Offer against the Premises.

16. Port Authority Activities. For the purpose of giving Master Concessionaire comfort that the Port Authority will remain solvent and that the Authority will spend adequate resources, both in man-hours and bonding capability, on the success of the Facility, the Port Authority agrees that any freight handling or storage Port Facility, intermodal rail loading and unloading facility, truck loading terminal, or other comparable transportation facility located in Wayne County under the control, authority or supervision of the Port Authority will, at the election of Master Concessionaire, be subject to the terms and provisions of this Master Concession Agreement and incorporated into the Facility.

17. Tax Treatment. It is recognized that Master Concessionaire and the Authority are sophisticated entities and are advised by experienced legal counsel. It is the intent of Master Concessionaire and the Authority that for federal income tax purposes the transaction described in this Agreement is to be treated as a concession agreement and not as a capital lease between the Authority and the Master Concessionaire. Ownership of the Premises and the buildings, docks and other permanent improvements thereon shall reside in the Authority. The following items are expressly agreed to not constitute real property and ownership, thereof shall not transfer to the Authority by reason of their being incorporated into the Facility: furniture, trade fixtures, cranes, and other machinery for loading and unloading ships. The Authority and Master Concessionaire agree that, to the extent permitted by Applicable Laws, each shall file all tax returns in conformity with the foregoing intentions. The parties acknowledge and agree that (a) neither has made any representations or warranties to the other concerning the tax, accounting or legal characteristics of the transaction detailed in this Agreement and (b) each have obtained and relied upon such tax, accounting and legal advice concerning this Agreement and the transactions described herein and therein as they deem appropriate. The Authority and Master Concessionaire covenant not to challenge the characterization of the transaction created pursuant to this Agreement as anything other than as outlined above. Each party expressly acknowledges that the parties intend that the transactions described herein not be construed as a joint venture or partnership transaction. Each party acknowledges that neither the Authority nor Master

Concessionaire would have entered into the transactions contemplated hereby and thereby if a joint venture or partnership were being created.

18. Miscellaneous.

18.1 Execution of this Agreement. This Agreement and any modifications, supplements or amendments thereto shall be valid only when it is executed by duly authorized agents of each Party.

18.2 Collection of Prior Accounts Receivable. Any accounts receivables which have outstanding balances at the time this Agreement takes effect for work performed at the Facility will constitute Gross Receipts.

18.3 Applicable Law. This Agreement shall be governed and construed by the substantive laws of the State of Michigan. In the event any provision(s) of this Agreement shall be adjudged invalid by a court or arbitrator having competent jurisdiction over the Parties, the invalid provision(s) shall be deleted from this Agreement and this Agreement shall be construed as to give effect to the remaining provisions.

18.4 Notices. All notices provided for herein shall be in writing and shall be tendered by U.S. Certified Mail to the receiving Party hereto at:

If to Master Concessionaire:

Ambassador Port Company  
12225 Stephens  
Warren, MI 48089

With a copy to:

Foley & Lardner LLP  
500 Woodward Avenue, Suite 2700  
Detroit, MI 48226  
Attn: George Ash, Esq.

If to the Authority:

Detroit/Wayne County Port Authority  
8109 E. Jefferson Avenue  
Detroit, MI 48214  
Attn: Executive Director

With a copy to:

Lewis & Munday, P.C.  
2490 First National Building  
660 Woodward Avenue  
Detroit, MI 48226  
Attn: David Baker Lewis, Esq.

In the case of a change in the mailing address of any Party hereto, the Party so changing its mailing address shall give notice thereof to the other Party hereto, and in the absence of any such notice of change of mailing address executed in accordance with this paragraph, notice given to

the respective aforesated mailing addresses shall be deemed sufficient for all purposes of this Agreement.

18.5 Captions. The captions appearing in this Agreement are for identification purposes only and shall not be construed as affecting in any way the meaning of the provisions hereof.

18.6 Attachments. All attachments are an integral part of this Agreement and set forth the entire understanding of the Parties in respect of the transactions contemplated. These documents supersede all prior agreements, arrangements, and understandings of the Parties concerning this Agreement and the operation of the Facility.

18.7 Modifications to this Agreement. This Agreement shall not be amended, modified, or altered, in whole or in part, except by mutual written agreement of the Parties hereto, properly executed by the same. No evidence of any such amendment, modification, or alteration of this Agreement shall be received in any controversy arising out of or pursuant to same except if it is in writing and executed in accordance with this subsection.

18.8 Successors and Assigns. This Agreement shall inure to the sole and exclusive benefit of and be of full and binding effect upon the Parties hereto and their respective successors and assigns. Nothing set forth in this Agreement, expressed, implied, or otherwise, is intended or shall be construed to confer upon or give to any person or entity other than the Parties hereto, and their respective successors and assigns, any right, remedy, benefit, cause of action, and/or chose in action under or by reason of this Agreement.

18.9 Force Majeure. Master Concessionaire shall be not liable for its failure to perform in whole or in part due to contingencies which have a material effect on its contractual performance, including, but not limited to, strikes, riots, war, fire, acts of God, compliance with any law, regulation, or order, whether valid or invalid of any other governmental body or any instrumentality thereof, whether now existing or hereafter created, or a delay in payment from the Facility Operator, as long as the Master Concessionaire diligently pursues such payment from the Facility Operator.

18.10 Dispute Resolution Procedures. All disputes arising under this Agreement shall be resolved pursuant to the procedures set forth in this paragraph 18.10 unless otherwise agreed by the Parties in writing.

a. Nothing in this paragraph shall be construed as limiting or delaying Master Concessionaire's right to seek injunctive relief from a court.

b. Except as set forth in subparagraph (a) above, neither Party shall initiate litigation under this Agreement without first following the dispute resolution procedure set forth herein.

c. In the event of a dispute arising under this Agreement, the aggrieved Party shall provide the other Party with written notice of a dispute. The Parties



agree to negotiate in good faith for a period of ten (10) days following receipt of the notice of a dispute.

d. If the Parties are unable to resolve the dispute(s) through good faith negotiations, then the Parties agree to submit the dispute to non-binding mediation with a third- Party mediator to be mutually agreed upon by the Parties. Each Party agrees to pay one half of the mediator's costs and fees. Five (5) days prior to the initial mediation session, each Party shall submit a written summary of its position regarding the dispute(s) to the mediator and the other Party. The mediation session(s) shall take place in the City, State of Michigan. If by the end of the mediation session, the Parties are not able to come to an accord, each party shall submit to the mediator a proposed final solution to the dispute. The mediator shall determine the proposed solution that most closely represents the proper outcome based on the mediator's application of the terms and conditions of this Agreement to the facts and circumstances at issue. If the Parties are not able to reach an accord, the mediator shall not be entitled to modify either proposed solution offered by the Parties. The parties agree that in any litigation, the proposed solution selected by the mediator shall be presumptively correct absent gross negligence or bad faith on the part of the mediator or the existence of material facts not known to the Parties and presented to the mediator at the time of the mediation.

e. If the Parties are unable to resolve the dispute(s) within thirty (30) days of the initial mediation session, then either Party may initiate litigation. The Federal District Court for the Eastern District of Michigan and the Circuit Court for the County of Macomb shall be the exclusive venues for litigating disputes arising under this Agreement. Each Party agrees to submit to the personal jurisdiction of the Federal District Court for the Eastern District of Michigan and/or the Circuit Court for the County of Macomb.

18.11 Remedies Cumulative. All remedies hereinbefore and hereinafter conferred on the Authority and Master Concessionaire shall be deemed cumulative, and no one remedy shall be exclusive of another or of any other remedy conferred by law.

18.12 Perpetuities Savings Clause. If any right of the Authority or Master Concessionaire provided for in this Agreement would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in or the suspension of the power of alienation of property, then such right or option shall be exercisable only during the period which shall end twenty-one years less one day after the date of death of the last survivor of the descendants living on the date of this Agreement of Joseph P. Kennedy, father of President John F. Kennedy and Ambassador to the Court of Saint James, but if any such rights, privileges and options shall be or become valid under Applicable Law for a period subsequent to the twenty-first anniversary of the death of the last such survivor (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges and options for a period in gross, exceeding the period for which such rights, privileges and options are hereinabove stated to extend and be valid), then such rights, privileges or options shall not terminate as aforesaid but shall extend to and continue

MASTER CONCESSION AGREEMENT

PORT OF DETROIT  
FINAL 5/17/05- CONFIDENTIAL

in effect, but only if such non-termination and extension shall then be valid under Applicable Law until such time as the same shall under Applicable Law cease to be valid.

18.13 Expenses of Enforcement. Master Concessionaire or the Authority shall pay all reasonable attorneys' fees and actual expenses incurred by the other Party in enforcing any provisions of this Agreement, caused by a defaulting Party hereunder, upon written demand therefor made by the non-defaulting Party.

IN TESTIMONY WHEREOF, the Parties have caused their respective corporate signatures to be subscribed by their respective duly authorized officers; these presents being executed in duplicate copies, each of which shall be considered as an original, this the date first above written.

DETROIT/WAYNE COUNTY PORT  
AUTHORITY

THE AMBASSADOR PORT COMPANY

By: 

By: 

Name: ARTHUR B. PHALKWELL, JR.

Name: DAN STAMPER

Its: CHAIRMAN

Its: DIRECTOR

MASTER CONCESSION AGREEMENT

PORT OF DETROIT  
FINAL 5/17/05- CONFIDENTIAL

STATE OF MICHIGAN

COUNTY OF Wayne, to-wit:

The foregoing Agreement was acknowledged before me by Arthur B. Blackwell, who holds the position of Chairman at DWCPA, a Michigan corporation, for and on behalf of said corporation, this 24<sup>th</sup> day of May, 2005.

My commission expires: VANESSA BAKER  
Notary Public, Wayne County, MI  
My Commission Expires Jan. 7, 2008

Vanessa Baker  
NOTARY PUBLIC

STATE OF MICHIGAN

COUNTY OF WAYNE, to-wit:

The foregoing Agreement was acknowledged before me by Stan STAMPER, who holds the position of DIRECTOR at the Authority, a Michigan corporation, for and on behalf of said corporation, this 21 day of JUNE, 2005.

My commission expires:

Linda D. DeKeyser  
NOTARY PUBLIC

LINDA D. DeKEYSER  
Notary Public, Macomb County, MI  
Acting in Wayne County, MI  
My Commission Expires December 15, 2008

**AGREEMENT RELATING TO SPRINGING INTEREST AND  
MASTER CONCESSION AGREEMENT**

by and between

**THE CITY OF DETROIT**

and

**THE AMBASSADOR PORT COMPANY**

## TABLE OF CONTENTS

	<u>Page</u>
1. Incorporation of Recitals. ....	2
2. Capitalized Terms. ....	2
3. Continuation of Concession, Attornment and Non-Disturbance. ....	3
4. Right of First Refusal. ....	3
5. Conflicts with Terms of Master Concession Agreement. ....	4
6. Modification of Master Concession Agreement. ....	4
7. Assignment by the City . ....	4
8. Assignment by Master Concessionaire. ....	4
9. No Assumption by the City of Liability With Respect to Premises. ....	5
10. Taxes. ....	5
11. Duration. ....	5
12. Expansion Properties. ....	5
13. Right to Cure. ....	5
14. Miscellaneous. ....	5

AGREEMENT RELATING TO SPRINGING INTEREST AND  
MASTER CONCESSION AGREEMENT

THIS AGREEMENT RELATING TO SPRINGING INTEREST AND MASTER CONCESSION AGREEMENT (this "Agreement") is effective as of the 7th day of July, 2005, by and among the City of Detroit (the "City") and Ambassador Port Company ("Master Concessionaire").

WITNESSETH:

WHEREAS, the Detroit/Wayne County Port Authority, a Michigan public body corporate and politic (the "Authority") is the owner of a fee simple defeasible interest in certain real property consisting of approximately 3.6425 acres of improved land commonly known as 4461 West Jefferson Avenue, Detroit, Michigan, along the Detroit River and certain other contiguous real property consisting of approximately 31.31 acres located at, and commonly known as, 4300, 4461, and 4500 West Jefferson Avenue, Detroit, Michigan (collectively, the "Premises");

WHEREAS, the Authority is a statutorily established entity funded by the State of Michigan, Wayne County and the City, in part through the issuance of tax-exempt bonds;

WHEREAS, the Authority was established for the purpose of developing and operating a "Port Facility" (as defined in Section 120.102 of the Port the Authority Act MCL 120, *et seq.*) in the City and intends to develop, maintain, expand and otherwise operate a Port Facility (including the real and personal property associated therewith, the "Facility") at the Premises and in the areas around the Premises when and if acquired and incorporated in the Facility;

WHEREAS, subject to the Authority's oversight and pursuant to a Master Concession Agreement between the Authority and Master Concessionaire dated of even date herewith (the "Master Concession Agreement"), the Authority has granted a concession (the "Concession") in the Premises and the Facility to Master Concessionaire for the purpose of assisting the Authority with the operation of the Facility;

WHEREAS, the parties expect that the Facility will continue to expand to include other properties proximate to the Premises ("Expansion Properties") and by the investment of private and public funds in the Facility (including possible borrowings from Master Concessionaire or from Master Concessionaire's affiliates or the issuance by the Authority of tax exempt bonds) and that concurrently with the addition of Expansion Properties to the Facility, the Concession and the definition of Premises shall expand to include any Expansion Properties;

WHEREAS, the Authority has received an exemption from real estate taxes for the Premises from the Tax Assessor for the City;

WHEREAS, the parties believe that the financial success of the Facility depends on the continued exemption of the Premises from real estate taxes and obtaining additional real estate tax exemptions for any Expansion Properties;

WHEREAS, concurrently with the execution of this Agreement, the Authority has executed a Promissory Note (the "Promissory Note") in favor of Master Concessionaire in the original principal amount of Two Million One Hundred Three Thousand Dollars and Forty One Cents (\$2,103,000.41) which includes a provision for the possible advance of future amounts by Master Concessionaire for the purposes of paying certain expenses relating to the expansion, maintenance, operation and improvement of the Facility;

WHEREAS, the Authority's fee interest in the Premises is subject to a conditional limitation that if the Master Concession Agreement is terminated, other than by mutual agreement of Master Concessionaire and the Authority; the occurrence of an Event of Default, as defined in the Master Concession Agreement, by the Authority; or if at any time the Property is no longer used as a Port Facility, then without further action on the part of any party, fee simple title to the Premises shall vest in the City (such interest of the City in the Premises being defined herein as the "Springing Interest"); and

WHEREAS, the City and Master Concessionaire desire to agree on terms pursuant to which the City and Master Concessionaire shall honor the terms of the Master Concession Agreement if the City succeeds to ownership of the Premises pursuant to the Springing Interest or otherwise.

NOW THEREFORE, in consideration of the premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, each being legally advised and intending to be legally bound hereby, hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated herein and this Agreement shall be interpreted in accordance therewith.

2. **Capitalized Terms.** All capitalized terms as used in this Agreement, unless otherwise defined, shall have the same meaning stated below:

"*Applicable Laws*" shall mean all existing and future applicable laws, rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any governmental authority, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction.

"*Authority*" shall have the meaning specified in the Recitals.

"*Bona Fide Offer*" shall have the meaning specified in Section 4 of this Agreement.

"*Business Day*" shall mean any day other than Saturday, Sunday or any other day that federally chartered banks located in Michigan are closed for business.

"*City*" shall have the meaning specified in the introductory clause hereof.

"*Concession*" shall mean Master Concessionaire's exclusive right to operate and manage the Facility and to perform the Facility Work on the Authority's behalf pursuant to the terms and Master Concession Agreement.

"*Event of Default*" shall mean the continuation of a default by Master Concessionaire or the City pursuant to the terms hereof beyond applicable cure periods, if any.

"*Expansion Properties*" shall have the meaning specified in the Recitals hereto.

"*Facility*" shall have the meaning specified in the Recitals hereto.

"*First Offer*" shall have the meaning specified in Section 4 hereof.

"*Party*" shall each of the parties hereto or both parties when used in the plural form.

"*Port Facility*" shall have the meaning specified in the third (3<sup>rd</sup>) recital hereto.

"Premises" shall have the meaning specified in the first (1<sup>st</sup>) recital hereto and is legally described in Exhibit A.

"Promissory Note" shall have the meaning specified in the tenth (10<sup>th</sup>) recital hereto.

"Springing Interest" shall have the meaning specified in the Recitals hereto.

"Term" A period beginning on the date hereof and ending up the earlier to occur of (a) one hundred eighty (180) days following the date of termination of the Master Concession Agreement by (i) mutual agreement of Master Concessionaire and the Authority; (ii) Master Concessionaire following the Authority's default under the Master Concession Agreement or (iii) reason of the Authority's rejection of the Master Concession Agreement in connection with a bankruptcy proceeding; (b) the maximum time period permitted under 14(h) hereof; (c) the date that Master Concessionaire purchases the Premises or the Springing Interest pursuant to Section 4 hereof; (d) the date that Master Concessionaire elects in writing for the City to assume the Authority's obligations under the Master Concession Agreement pursuant to Section 3(b); (e) the date that the City and Master Concessionaire execute a Replacement Master Concession Agreement pursuant to Section 3(c) hereof; or (f) ninety-nine (99) years, 364 days from the date hereof.

3. Continuation of Concession, Attornment and Non-Disturbance. If at any time during the Term the City succeeds to the Authority's interest in the Premises, pursuant to the Springing Interest or otherwise, the City shall immediately notify Master Concessionaire in writing. If the Master Concession Agreement has not earlier terminated by mutual agreement of Master Concessionaire and the Authority, then the City and the Master Concessionaire may mutually agree to terminate the Master Concession Agreement, or mutually agree to renegotiate the Master Concession Agreement. Absent such mutual agreement, the Master Concession Agreement shall continue, without cost to the City or its taxpayers, subject to the condition that if the Premises should ever cease to be used as a public port facility as that term is used in the Port Authority Act, then title to the Premises shall vest in the City or such other public entity as the City may designate, without cost to the City or its taxpayers, and free and clear of any debts, liens or encumbrances or other liabilities.

4. Right of First Refusal. The City shall not sell the Premises or any interest in the Premises (including the Springing Interest) during the Term hereof or during the term of the Master Concession Agreement or any Replacement Master Concession Agreement, except in accordance with this Section.

(a) If, prior to the time that the City succeeds to the Authority's interest in the Premises, the City receive from a bona fide, arm's-length purchaser not affiliated in any way with the Authority or the City, a bona fide written offer ("Bona Fide Offer") to purchase all or any part of the City's interest in the Premises (including the Springing Interest) and should the City desire to accept the Bona Fide Offer, the City shall first make a written offer (the "First Offer") to sell the City's interest in the Premises to Master Concessionaire at the price and upon the terms and conditions set forth in the Bona Fide Offer. The First Offer shall be accompanied by a copy of the Bona Fide Offer.

(b) Master Concessionaire may accept the First Offer by service of notice of acceptance to the City on or before the thirtieth (30<sup>th</sup>) day next following delivery of the First Offer to Master Concessionaire plus any earnest money delivered therewith. Failure of Master



Concessionaire to respond during said thirty (30) day period shall be deemed a conclusive waiver of Master Concessionaire's right to accept the First Offer.

(c) If the First Offer is accepted, the purchase and sale shall be closed at the principal office of the City on the date set forth in the Bona Fide Offer or at such other place, time and date as the City and the Master Concessionaire may mutually agree upon, by payment of the Purchase Price against conveyance of the City's interest in the Premises subject to the terms of the First Offer.

(d) If Master Concessionaire fails to fully and timely accept the First Offer as herein provided, the City may sell the City's interest in the Premises to the bona fide prospective purchaser making the Bona Fide Offer in accordance with the terms thereof. The successor to the City's interest shall take title subject to the City's obligations under this Agreement, including the obligations to honor the Master Concession Agreement and the right of Master Concessionaire to apply amounts payable under the Master Concession Agreement to the holder of the Authority's or City's interest in the Premises to satisfy the Promissory Note.

(e) If the City fails to consummate the sale of the City's interest in accordance with the Bona Fide Offer, Master Concessionaire's right of first refusal described in this Section and other rights provided for in this Agreement shall remain in full force and effect.

(f) If the City succeeds to the Authority's interest in the Premises, either pursuant to the Springing Interest or otherwise, the Authority's interest in the Premises shall be subject to Master Concessionaire's right of first offer in the Premises pursuant to the terms of the Master Concession Agreement or Replacement Concession Agreement.

(g) Master Concessionaire shall be entitled to require the City to execute a memorandum of this right of first offer and of Master Concessionaire's rights under this Agreement in recordable form and record that memorandum against the Premises.

5. Conflicts with Terms of Master Concession Agreement. In the event of a conflict between the Master Concession Agreement and this Agreement, then as between Master Concessionaire and the City, the terms of this Agreement shall govern. This Agreement shall remain in full force and effect and shall not be further modified or amended without the prior written consent of the City and Master Concessionaire.

6. Modification of Master Concession Agreement. The Master Concession Agreement may be modified or amended without the prior written consent of the City. However, no modification to the Master Concession Agreement shall modify the terms of this Agreement.

7. Assignment by the City. The rights and obligations of the City hereunder are personal rights and obligations of the City and will reside with the City notwithstanding any sale of the Premises. Moreover, such rights and obligations shall run with the Premises and shall be binding on any successor in interest to the Springing Interest or to the City's rights in the Premises.

8. Assignment by Master Concessionaire. Master Concessionaire shall be entitled to assign this Agreement and Master Concessionaire's rights hereunder to any assignee, lender, or other successor in interest to Master Concessionaire's rights and privileges under the Master Concession Agreement or in the Premises. Such an assignment shall be effective upon delivery to the City of notice of such assignment.

9. No Assumption by the City of Liability With Respect to Premises.

(a) Except as otherwise provided herein, this Agreement shall not operate to place responsibility for the control, care, maintenance, or repair of the Premises or the Facility upon the City or to make the City responsible or liable to Master Concessionaire, the Authority or any third party for any waste committed on the Premises by any tenant, or any other person; for any dangerous or defective condition of the Premises; for any environmental contamination or unlawful condition existing at the Premises, or for any negligence in the management, upkeep, repair, or control of the Premises.

(b) It is understood and agreed that nothing contained in this Agreement shall prejudice or be construed to prejudice the right of the City to institute, prosecute, and compromise any action which it may deem advisable to protect its Springing Interest.

(c) Except to the extent required by Applicable Law, the City shall not be liable to any tenant or to any other third party for any refunds or other sums due such tenant or third party under any lease, or other agreement relating to the Premises.

(d) Except with respect to amounts payable to the City under the Master Concession Agreement or a Substitute Master Concession Agreement, the City shall not be personally liable for any amounts due and outstanding under the Promissory Note or from the Authority to Master Concessionaire under the Master Concession Agreement.

10. Taxes. The City hereby confirms that the Authority is currently a tax exempt entity and that the Premises, as subject to the Master Concession Agreement, is exempt from real property taxes and assessments. If the City succeeds to the Authority's interest in the Premises, the City covenants to preserve the tax exempt status of the Premises and to not take actions that would be reasonably likely to result in the Premises being subject to real property taxes and assessments.

11. Duration. This Agreement shall continue in full force and effect for the entire Term.

12. Expansion Properties. This Agreement shall bind the City and Master Concessionaire with respect to any Expansion Property acquired by the Authority and subject to the Springing interest or a comparable right of the City in and to such Expansion Property.

13. Right to Cure. Prior to commencing judicial proceedings against the Authority for a default by the Authority under the Promissory Note, Master Concessionaire shall first notify the City in writing as to the cause of the default and afford the City thirty (30) days in which to cure such default by the Authority.

14. Miscellaneous.

(a) Execution of this Agreement. This Agreement and any modifications, supplements or amendments thereto shall be valid only when it is executed by duly authorized agents of each Party.

(b) Applicable Law. This Agreement shall be governed and construed by the substantive laws of the State of Michigan. In the event any provision(s) of this Agreement shall be adjudged invalid by a court or arbitrator having competent jurisdiction over the Parties, the invalid provision(s) shall be deleted from this Agreement and this Agreement shall be construed as to give effect to the remaining provisions.

(c) Notices. All notices provided for herein shall be in writing and shall be tendered by U.S. Certified Mail to the receiving Party hereto at:

If to Master Concessionaire:

Ambassador Port Company  
12225 Stephens  
Warren, MI 48089

With a copy to:

Foley & Lardner LLP  
500 Woodward Avenue, Suite 2700  
Detroit, MI 48226  
Attn: George Ash, Esq.

If to the City:

The City of Detroit  
Legal Department  
Detroit, MI 48226

In the case of a change in the mailing address of any Party hereto, the Party so changing its mailing address shall give notice thereof to the other Party hereto, and in the absence of any such notice of change of mailing address executed in accordance with this paragraph, notice given to the respective aforestated mailing addresses shall be deemed sufficient for all purposes of this Agreement.

(d) Modifications to this Agreement. This Agreement shall not be amended, modified, or altered, in whole or in part, except by mutual written agreement of the Parties hereto, properly executed by the same. No evidence of any such amendment, modification, or alteration of this Agreement shall be received in any controversy arising out of or pursuant to same except if it is in writing and executed in accordance with this subsection.

(e) Successors and Assigns. This Agreement shall inure to the sole and exclusive benefit of and be of full and binding effect upon the Parties hereto and their respective successors and assigns. Nothing set forth in this Agreement, expressed, implied, or otherwise, is intended or shall be construed to confer upon or give to any person or entity other than the Parties hereto, and their respective successors and assigns, any right, remedy, benefit, cause of action, and/or chose in action under or by reason of this Agreement.

(f) Dispute Resolution Procedures.

(i) All disputes arising under this Agreement shall be resolved pursuant to the procedures set forth in this paragraph 14(f) unless otherwise agreed by the Parties in writing.

(ii) Nothing in this paragraph shall be construed as limiting or delaying Master Concessionaire's right to seek injunctive relief from a court.

(iii) Except as set forth in subparagraph (a) above, neither Party shall initiate litigation under this Agreement without first following the dispute resolution procedure set forth herein.

(iv) In the event of a dispute arising under this Agreement, the aggrieved Party shall provide the other Party with written notice of a dispute. The Parties agree to

negotiate in good faith for a period of ten (10) days following receipt of the notice of a dispute.

(v) If the Parties are unable to resolve the dispute(s) through good faith negotiations, then the Parties agree to submit the dispute to non-binding mediation with a third- Party mediator to be mutually agreed upon by the Parties. Each Party agrees to pay one half of the mediator's costs and fees. Five (5) days prior to the initial mediation session, each Party shall submit a written summary of its position regarding the dispute(s) to the mediator and the other Party. The mediation session(s) shall take place in the City, state of Michigan. If by the end of the mediation session, the Parties are not able to come to an accord, each party shall submit to the mediator a proposed final solution to the dispute. The mediator shall determine the proposed solution that most closely represents the proper outcome based on the mediator's application of the terms and conditions of this Agreement to the facts and circumstances at issue. If the Parties are not able to reach an accord, the mediator shall not be entitled to modify either proposed solution offered by the Parties. The parties agree that in any litigation, the proposed solution selected by the mediator shall be presumptively correct absent gross negligence or bad faith on the part of the mediator or the existence of material facts not known to the Parties and presented to the mediator at the time of the mediation.

(vi) If the Parties are unable to resolve the dispute(s) within thirty (30) days of the initial mediation session, then either Party may initiate litigation. The Federal District Court for the Eastern District of Michigan and the Circuit Court for the County of Wayne shall be the exclusive venues for litigating disputes arising under this Agreement. Each Party agrees to submit to the personal jurisdiction of the Federal District Court for the Eastern District of Michigan and/or the Circuit Court for the County of Wayne.


(g) Remedies Cumulative. All remedies hereinbefore and hereinafter conferred on the City and Master Concessionaire shall be deemed cumulative, and no one remedy shall be exclusive of another or of any other remedy conferred by law.

(h) Perpetuities Savings Clause. If any right of the City or Master Concessionaire provided for in this Agreement would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in or the suspension of the power of alienation of property, then such right or option shall be exercisable only during the period which shall end twenty-one years less one day after the date of death of the last survivor of the descendants living on the date of this Agreement of Joseph P. Kennedy, father of President John F. Kennedy and Ambassador to the Court of Saint James, but if any such rights, privileges and options shall be or become valid under Applicable Law for a period subsequent to the twenty-first anniversary of the death of the last such survivor (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges and options for a period in gross, exceeding the period for which such rights, privileges and options are hereinabove stated to extend and be valid), then such rights, privileges or options shall not terminate as aforesaid but shall extend to and continue in effect, but only if such non-termination and extension shall then be valid under Applicable Law until such time as the same shall under Applicable Law cease to be valid.

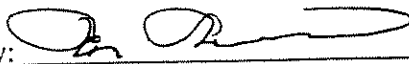
(i) Expenses of Enforcement. Master Concessionaire or the City shall pay all reasonable attorneys' fees and actual expenses incurred by the other Party in enforcing any provisions of this Agreement, caused by a defaulting Party hereunder, upon written demand therefor made by the non-defaulting Party.

IN TESTIMONY WHEREOF, the Parties have caused their respective corporate signatures to be subscribed by their respective duly authorized officers; these presents being executed in duplicate copies, each of which shall be considered as an original, this the date first above written.

CITY OF DETROIT

By:   
Name: Anthony Adams  
Its: Deputy Mayor

THE AMBASSADOR PORT  
COMPANY

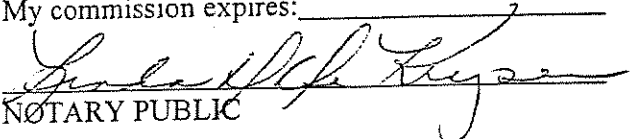
By:   
Name: DAN STAMPER  
Its: DIRECTOR

STATE OF MICHIGAN

COUNTY OF WAYNE, to-wit:

The foregoing Agreement was acknowledged before me by DAN  
STAMPER, who holds the position of DIRECTOR  
at \_\_\_\_\_, a Michigan corporation, for and on behalf of said corporation, this  
21 day of JUNE, 2005.

My commission expires: \_\_\_\_\_

  
NOTARY PUBLIC

LINDA D. DeKEYSER  
Notary Public, Macomb County, MI  
Acting in Wayne County, MI  
My Commission Expires December 15, 2006

STATE OF MICHIGAN

COUNTY OF WAYNE, to-wit:

The foregoing Agreement was acknowledged before me by ANTHONY  
ADAMS, who holds the position of DEPUTY MAYOR at the City, a  
Michigan corporation, for and on behalf of said corporation, this 17TH day of  
JUNE, 2005.

My commission expires: \_\_\_\_\_

  
NOTARY PUBLIC

LINDA D. DeKEYSER  
Notary Public, Macomb County, MI  
Acting in Wayne County, MI  
My Commission Expires December 15, 2006

**SUBCONCESSION AGREEMENT BETWEEN  
AMBASSADOR PORT COMPANY  
AND  
NICHOLSON TERMINAL AND DOCK COMPANY**

## TABLE OF CONTENTS

	Page No.
1. <b>DEFINITIONS</b>	2
1.1 <u>Incorporation of Recitals</u>	2
1.2 <u>Prior Defined Terms</u>	2
2. <b>RIGHTS AND PRIVILEGES GRANTED TO SUBCONCESSIONAIRE</b>	7
2.1 <u>Rights and Privileges</u>	7
2.2 <u>Commencement of Business</u>	7
2.3 <u>Grant of Concession and Facility Work</u>	7
2.4 <u>Scope of Discretion in the Performance of Facility Work</u>	9
2.5 <u>Exclusivity</u>	9
2.6 <u>Relocation/Surrender of Premises</u>	9
2.7 <u>Failure to Approve Plans and Proposals</u>	9
2.8 <u>Return of the Facility</u>	9
2.9 <u>No Termination by the Subconcessionaire</u>	9
2.10 <u>Changes in the Facility over the Term of the Subconcession</u>	10
3. <b>USE OF PREMISES</b>	10
3.1 <u>Permitted Uses</u>	10
3.2 <u>Discontinuance of Services</u>	10
4. <b>TERM</b>	11
5. <b>SUBCONCESSION PAYMENTS AND ACCOUNTING RECORDS</b>	11
5.1 <u>Application of Revenues from the Facility</u>	11
5.2 <u>Collection and Distribution of Capital Receipts</u>	11
5.3 <u>Books and Records/Right of Master Concessionaire and Authority to Audit</u>	11
5.4 <u>Other Records</u>	12
5.5 <u>Annual Certification of Fees</u>	13
5.6 <u>Cash Handling Procedures</u>	13
5.7 <u>Additional Sums Due Master Concessionaire</u>	13
5.8 <u>Sales, Use or Other Taxes</u>	14
5.9 <u>Letter of Credit</u>	14
6. <b>IMPROVEMENTS TO PREMISES</b>	14
6.1 <u>Improvements to be Constructed by Master Concessionaire</u>	14
6.2 <u>Improvements to be Constructed by Subconcessionaire</u>	15
6.3 <u>Requirements and Procedures</u>	15
6.4 <u>Time Schedule-Preparation and Approval of Plans and Specifications</u>	16
7. <b>OBLIGATIONS OF SUBCONCESSIONAIRE</b>	17
7.1 <u>Facility Open to the Public</u>	17
7.2 <u>Type of Operation</u>	17
7.3 <u>Reasonable Prices</u>	18
7.4 <u>Standards of Service</u>	18
7.5 <u>Safety and Security Rules</u>	18
7.6 <u>Port Security</u>	18



7.7	<u>Procurement of Licenses and Permits</u> .....	18
7.8	<u>Environmental Compliance</u> .....	18
7.9	<u>Hazardous Cargo</u> .....	19
7.10	<u>Conduct of Operations/Independent Contractor Status</u> .....	19
7.11	<u>Protection of Authority's Title in Premises</u> .....	19
7.12	<u>Uses Prohibited</u> .....	19
7.13	<u>Waste and Nuisance Prohibited</u> .....	19
7.14	<u>Signs and Graphics</u> .....	20
7.15	<u>Manager</u> .....	20
7.16	<u>Personnel</u> .....	20
7.17	<u>Maintenance of Premises/Utilities</u> .....	21
7.18	<u>Customer Complaints</u> .....	22
7.19	<u>Governmental Notices</u> .....	22
7.20	<u>Safety and Security Rules</u> .....	22
7.21	<u>Preference for Facility</u> .....	22
8.	<b><u>OBLIGATIONS OF MASTER CONCESSIONAIRE</u></b> .....	23
8.1	<u>Master Concessionaire's Master Plan Obligation</u> .....	23
8.2	<u>Master Concession Agreement</u> .....	23
8.3	<u>No Competing Businesses</u> .....	23
8.4	<u>No Other Obligation of Master Concessionaire or Authority</u> .....	23
9.	<b><u>SECURITY FOR PERFORMANCE</u></b> .....	24
10.	<b><u>RIGHTS OF AUTHORITY AND MASTER CONCESSIONAIRE TO REPAIR OR ALTER FACILITIES</u></b> .....	24
10.1	<u>Ancillary Services</u> .....	24
10.2	<u>Grants of Easements, Licenses and Estoppels</u> .....	24
11.	<b><u>INDEMNIFICATION AND INSURANCE</u></b> .....	25
11.1	<u>Indemnification by Subconcessionaire</u> .....	25
11.2	<u>Indemnification by Master Concessionaire</u> .....	25
11.3	<u>Liability Insurance</u> .....	26
11.4	<u>Property Insurance</u> .....	27
11.5	<u>Right of Master Concessionaire or Authority to Purchase</u> .....	28
11.6	<u>Member Protection</u> .....	28
11.7	<u>Insurance and Indemnification Obligations of Other Occupants</u> .....	29
11.8	<u>Survival of Provisions</u> .....	29
12.	<b><u>DAMAGE OR DESTRUCTION</u></b> .....	29
12.1	<u>Damage or Destruction of Improvements</u> .....	29
13.	<b><u>DEFAULT BY SUBCONCESSIONAIRE</u></b> .....	29
13.1	<u>Events of Default</u> .....	29
13.2	<u>Remedies Upon Subconcessionaire's Default</u> .....	31
13.3	<u>Further Provisions Regarding Default</u> .....	31
14.	<b><u>DEFAULT BY MASTER CONCESSIONAIRE</u></b> .....	32
14.1	<u>Events of Default</u> .....	32
14.2	<u>Remedies Upon Master Concessionaire's Default</u> .....	33
14.3	<u>Further Provisions Regarding Default</u> .....	33
14.4	<u>Waiver of Jury Trial</u> .....	34

15.	<u>ASSIGNMENT.</u>	34
15.1	<u>Title.</u>	34
15.2	<u>Transfer of Ownership Interests.</u>	34
16.	<u>WAIVER OF CLAIMS.</u>	34
17.	<u>MISCELLANEOUS.</u>	34
17.1	<u>Execution of this Agreement.</u>	34
17.2	<u>Collection of Prior Accounts Receivable.</u>	35
17.3	<u>Applicable Law.</u>	35
17.4	<u>Resolution of Inconsistencies.</u>	35
17.5	<u>Notices.</u>	35
17.6	<u>Captions.</u>	35
17.7	<u>Attachments.</u>	36
17.8	<u>Modifications to this Agreement.</u>	36
17.9	<u>Successors and Assigns.</u>	36
17.10	<u>Force Majeure.</u>	36
17.11	<u>Dispute Resolution Procedures.</u>	36
17.12	<u>Remedies Cumulative.</u>	37
17.13	<u>Perpetuities Savings Clause.</u>	37
17.14	<u>Expenses of Enforcement.</u>	38
17.15	<u>Remedies: Attorneys' Fees and Costs.</u>	38
17.16	<u>Regulations of Master Concessionaire and Subconcessionaire.</u>	38
17.17	<u>Interest.</u>	38
17.18	<u>Other Miscellaneous Provisions.</u>	38
17.19	<u>Subconcessionaire's Consent to Subconcession Agreement: Subconcessionaire's Obligations to Subconcessionaire</u>	39
17.20	<u>Confidentiality.</u>	39
17.21	<u>Entire Agreement.</u>	41

## SUBCONCESSION AGREEMENT

**THIS SUBCONCESSION AGREEMENT** (this "**Agreement**") is effective this 7th day of July, 2005, by and between the Ambassador Port Company, a Michigan corporation ("**Master Concessionaire**"), and Nicholson Terminal and Dock Company ("**Subconcessionaire**").

**WITNESSETH:**

**WHEREAS**, Detroit/Wayne County Port Authority (the "**Authority**") is the owner of certain real property legally described in **Exhibit A** consisting of approximately 3.64 acres of real property commonly known as 4461 West Jefferson Avenue, Detroit, Michigan, along the Detroit River, (the "**Smaller Parcel**") and approximately 31.31 acres of real property adjacent thereto and commonly known as, 4300, 4461, and 4500 West Jefferson Avenue, Detroit, Michigan ( the "**Larger Parcel**" collectively the Smaller Parcel and the Larger Parcel are referred to as the "**Port Property**").

**WHEREAS**, the Authority was established for the purpose of developing and operating a "**Port Facility**" (as defined in Section 120.102 of the Port the Authority Act, MCL 120-100, et. al.) in the City of Detroit (the "**City**") and intends to develop, maintain, expand and otherwise operate a Port Facility at the Port Property;

**WHEREAS**, pursuant to that certain Master Concession Agreement (the "**Master Concession Agreement**") dated July 7, 2005, the Authority has granted to Master Concessionaire a concession (the "**Concession**") for the purpose of *inter alia*, operating a Port Facility on the Port Property;

**WHEREAS**, as part of its operations of a Port Facility, Master Concessionaire desires to hire Subconcessionaire as a "Facility Operator" pursuant to the Master Concession Agreement to operate a Stevedoring Operation (as defined herein) from those areas of the Port Property designated as the "**Premises**" on Exhibit A;

**WHEREAS**, a Stevedoring Operation will require the use and development of certain existing and future improvement to the Premises which improvements, collectively with the Premises, will be referred to herein as the "**Facility**."

**WHEREAS**, Subconcessionaire owns and operates a port facility south of the Port Property legally described in **Exhibit B** (the "**Ecorse Port**") and warrants that the Exhibit B description represents the entire Ecorse Port owned by Subconcessionaire;

**WHEREAS**, to secure Subconcessionaire's performance of its obligations hereunder, Subconcessionaire desires to contribute certain revenues from the Ecorse Port to Master Concessionaire;

**WHEREAS**, Subconcessionaire has been in business for over 75 years conducting Stevedoring Operations and during that period of time has developed substantial good will,

knowledge of Stevedoring Operations in the Port of Detroit, and well established good relations with a great many customers who repeatedly and faithfully use Subconcessionaire's services;

**WHEREAS**, in part, based upon, and induced by the promises and covenants contained in this Agreement, Subconcessionaire has agreed to consolidate its Stevedoring Operations at the Port Facility and the Ecorse Facility and to grant Master Concessionaire a right to share in the revenues of these consolidated operations;

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

1.1 Incorporation of Recitals. The foregoing Recitals are incorporated herein and this Agreement shall be interpreted in accordance therewith.

1.2 Prior Defined Terms. All capitalized terms used in this Agreement, unless otherwise defined in this section or elsewhere in this Agreement, shall have the same meaning stated below:

*"Affiliate"* shall mean a person or entity controlling, controlled by, or under common control with, another person. The terms "affiliated" and "affiliation" have meanings correlative to the foregoing.

*"Ancillary Services"* shall mean with respect to Subconcessionaire, those services related to terminal operation which Subconcessionaire may be requested to perform by its stevedoring customers in conjunction with agreements for Stevedoring Operations on the Premises in areas approved by the Master Concessionaire or anywhere in support of the Ecorse Port. With respect to the Master Concessionaire, Ancillary Services include Stevedoring Operations Master Concessionaire may perform for itself or its affiliates (not for hire) on the Facility or Expansion Properties.

*"Applicable Laws"* shall mean all existing and future applicable laws, rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any governmental authority, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi judicial tribunal or agency of competent jurisdiction (a) pertaining to the construction of improvements relating to the Facility or the use, occupancy, ownership or operation of the Facility, (b) in any way limiting the use or enjoyment of the Facility, including without limitation, Environmental Laws, Wetlands Regulations, Wildlife Protection Acts, Archeological Protection Acts, all building, zoning and fire codes and all permits, certificates of occupancy, licenses, authorizations and regulations relating to the Facility, (c) statutes, rules, regulations and orders pertaining to United States Export Controls; (d) governing the Authority's agents,

employees, contractors, or concessionaires; and (e) otherwise relating to the Facility and the use and operation of the Premises as a Port Facility.

*“Archeological Protection Acts”* shall mean all Applicable Laws relating to the regulation, maintenance or presentation of archeological conditions.

*“Authority”* shall have the meaning specified in the first (1<sup>st</sup>) recital hereto.

*“Baseline Assessment”* shall mean that certain draft Baseline Environmental Assessment dated August 20, 2003, prepared by Conestoga Rovers & Associates, supplemented by the Draft Review of Environmental Conditions dated September 14, 2004 prepared by Freudenthal & Elkowitz Consulting Group, Ind.

*“Budget”* shall mean the operating budget for the Facility as approved by Master Concessionaire (and the Authority as part of the Budget for the Port Property) for each year of the Subconcession Term.

*“Business Day”* shall mean any day other than Saturday, Sunday or a day that federally chartered banks located in Michigan are open for business.

*“Capital Receipts”* shall mean net revenues (after payment of transfer taxes, conveyance fees, brokerage commissions, sale expenses including attorneys’ fees, recording costs, title insurance fees, due diligence expenses and other customary seller costs) earned in connection with the sale, transfer, assignment, grant of licenses or easements or the subletting of the Premises and any improvements, equipment or other personal property included as part of the Facility that is not the personal property of Subconcessionaire, or personal property of Subconcessionaire that has become a fixture of the Port Facility.

*“City”* shall have the meaning specified in the second (2<sup>nd</sup>) recital hereto.

*“Concession”* shall mean the exclusive right of Master Concessionaire to operate and manage the Port Property and to perform the Facility Work on the Authority’s behalf pursuant to the terms and conditions of the Master Concession Agreement.

*“Default Rate”* shall mean an annual rate of interest equal to nine hundred (900) basis points over the yield to maturity on United States Treasury notes having a remaining term to maturity, as near as possible to five (5) years, as such yield is published in The Wall Street Journal (or any successor thereto) on the date of determination, but in no event less than 12% per annum, nor greater than the maximum allowed by law.

*“Ecorse Port”* shall have the meaning specified in the fifth (5<sup>th</sup>) recital hereto.

*“Environmental Laws”* shall mean all federal, state and local laws, statutes, ordinances, codes and regulations relating to environmental protection including those so defined in or regulated under any of the following: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act, a/k/a

the Clean Water Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S. Code Section 9601, et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 1801, et seq. (the Hazardous Materials Transportation Act) and the Michigan Natural Resources and Environmental Protection Act (NEPRA) 1994 PA 451.

*"Event of Default"* shall mean the continuation of a Master Concessionaire Default in the case of Master Concessionaire, or a Subconcessionaire Default, in the case of Subconcessionaire beyond applicable cure periods, if any.

*"Expansion Properties"* shall mean real property subsequently added to the Port Property in accordance with the terms of the Master Concession Agreement.

*"Facility"* shall have the meaning specified in the fifth (5th) recital hereto.

*"Facility Operating Standard"* shall mean the standard by which Subconcessionaire shall operate the Facility which shall mean: (a) in accordance with reasonable business judgment; (b) in accordance with the terms of the Master Concession Agreement and this Agreement; (c) in a manner that will not result in Master Concessionaire or the Authority being personally liable to third parties except as otherwise agreed to by Master Concessionaire and/or the Authority.

*"Facility Work"* shall have the meaning specified in Section 2.3 hereof.

*"Gross Receipts"* means all revenues (including "pass throughs") received by Subconcessionaire and any affiliate, subtenant or licensee of the Subconcessionaire (without duplication of any amounts already included in the definition of Gross Receipts) from Stevedoring Operations and Ancillary Services at the Facility or the Ecorse Port; adjusted by the deduction of the following, provided that separate records are maintained for such deductions: (a) Capital Receipts from the Facility; (b) credits and refunds to customers for Stevedoring Operations provided from the Facility or the Ecorse Port; or (c) amounts of any separately stated federal, state and local sales or use taxes imposed upon Subconcessionaire's customers and collected by Subconcessionaire. Gross Receipts shall not include (1) payments received by Subconcessionaire's affiliate from Subconcessionaire for the performance of Ancillary Services at the Facility or the Ecorse Port, nor (2) revenue from the Ecorse Port for any of the following activities: ship/repair, storage or warehousing of cargo or waterborne vessels for more than thirty (30) consecutive days, lumber transfers and reloading, barge transfers, die storage, beam and plate storage, dry dock operations, fabrication and/or truck and rail storage.

No deduction shall be made from Gross Receipts by reason of any credit loss sustained or financing discount that may be applicable by reason of the acceptance or use of credit cards or by reason of any other credit arrangements. If any charge customarily made by Subconcessionaire for goods and services is not assessed, charged or collected for any reason, or if such customary charge is exchanged for "in kind" services or remuneration, then the amount of Subconcessionaire's customary charge therefore shall nevertheless be included in determining Gross Receipts.

Gross Receipts shall be computed and audited in accordance with the provisions of this Agreement. In the event of any conflict between the provisions of this Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Agreement shall control, and the provisions of this Agreement shall not be limited by such principles or standards.

*"Hazardous Cargo"* shall mean Hazardous Materials and any other materials, such as waste, arms, explosives, and similar products, that present unusual safety or health risks in connection with their storage, transportation or disposal or that are subject to reporting, permitting or other governmental laws, ordinances or regulations relating to their storage, shipping, or disposal by reason of their potential negative impacts on the health or physical welfare of peoples, animals or plants.

*"Hazardous Materials"* shall mean any substance or material that is described as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the environmental laws, and includes asbestos, petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum products, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity;

*"Larger Parcel"* shall have the meaning specified in the first (1<sup>st</sup>) recital hereto.

*"Letter of Credit"* shall mean the security provided by Subconcessionaire as described in section 5.9, to assure the timely performance of the Subconcession Payment.

*"Master Concessionaire Default"* shall mean any material breach of a representation or warranty of Master Concessionaire, any material failure of Master Concessionaire to perform obligations and covenants provided for herein, or a Master Concessionaire default under the Master Concession Agreement, and any additional circumstances and events specified as constituting Master Concessionaire Defaults hereunder.

*"Master Plan"* shall mean the plan for the physical future of the Port Property as required to be prepared and submitted by Master Concessionaire to the Authority pursuant to the Master Concession Agreement.

*"Operating Procedures"* shall mean the procedures for operation of the Port Property as approved by Master Concessionaire (and the Authority as part of the Operating Procedures for the Port Property) from time to time.

*"Parties"* shall mean both Master Concessionaire and Subconcessionaire.

*"Plan Submittal Date"* shall mean January 15 of each year of the Subconcession Term or the next Business Day thereafter.

*"Port Facility"* shall have the meaning specified in the second (2<sup>nd</sup>) recital hereto.

*“Port Property”* shall have the meaning specified in the first (1<sup>st</sup>) recital hereto.

*“Premises”* shall have the meaning specified in the fourth (4<sup>th</sup>) recital hereto.

*“Pricing Schedule”* shall mean the pricing list of Use Fees for Stevedoring Operations prepared by Subconcessionaire and approved by Master Concessionaire (and the Authority as part of Pricing Schedule for the Port Property) which pricing lists shall be applicable for one year as specified in Section 2.3(c) hereof.

*“Receipts Report”* shall have the meaning specified in Section 5.3.

*“Refunding Amounts”* shall mean all amounts payable by Subconcessionaire to Master Concessionaire as consideration for Master Concessionaire’s entry into this Subconcession Agreement, including without limitation, Subconcessionaire’s agreement to pay to Master Concessionaire a percentage of amounts generated by Subconcessionaire from Stevedoring Operations and Ancillary Services at the Ecorse Port and any other port facility located within one hundred (100) miles of the Premises.

*“Smaller Parcel”* shall have the meaning specified in the first (1<sup>st</sup>) recital hereto.

*“Stevedoring Operations”* shall mean the docking of waterborne vessels and the loading or unloading by any means of cargo to or from any type of waterborne vessel, and the loading of such cargo directly onto any type of land transport, including but not limited to truck, car or rail transportation means, and the temporary storage or warehousing of said cargo at or on specifically designated locations identified by the Master Concessionaire. This term shall not mean the following services: ship repair, storage or warehousing of cargo or waterborne vessels for more than thirty (30) consecutive days, lumber transfers and reloading, barge transfers, die storage, beam and plate storage, dry dock operations, fabrication and/or truck and rail storage.

*“Subconcession”* shall have the meaning specified in Section 2.1 hereto.

*“Subconcession Payment”* means that portion of Gross Receipts and Capital Receipts payable to Master Concessionaire under Section 5 herein.

*“Subconcession Term”* shall mean a period commencing on the date hereof and ending on July 6, 2030 as such period shall be shortened or extended pursuant to the terms hereof. Unless the Subconcession Term is earlier ended or extended in accordance with the terms hereof, the Subconcession Term shall correspond to the Concession Term under the Master Concession Agreement.

*“Subconcessionaire Default”* shall mean any material breach of a representation or warranty of Subconcessionaire, any material failure of Subconcessionaire to perform obligations, make payments, or satisfy covenants provided for herein, or any additional circumstances and events specified as constituting Subconcessionaire Defaults hereunder.



“*Use Fees*” shall mean the fees, tariffs or charges imposed by Subconcessionaire on users of the Facility and other activities relating to the Facility that generate Gross Receipts.

“*Wetlands Regulations*” shall mean all Applicable Laws relating to the regulation, preservation, maintenance and creation of wetlands areas.

“*Wildlife Protection Acts*” shall mean the Endangered Species Act of 1973, as provided for in 16 USCS §§ 1531 *et seq.*, as amended from time to time, together with any other federal, state or local wildlife, vegetation or habitat protection acts.

2. Rights and Privileges Granted to Subconcessionaire.

2.1 Rights and Privileges. For and in consideration of Subconcessionaire’s agreements provided for herein, Master Concessionaire hereby grants to Subconcessionaire the right and privilege (the “**Subconcession**”) to exercise a portion of the Concession under the Master Concession Agreement, but only with respect to the provision of Stevedoring Operations and Ancillary Services from the Premises. The Subconcession shall be limited to conducting Stevedoring Operations and permitted Ancillary Services at the Facility unless otherwise agreed to by Master Concessionaire pursuant to an amendment to the Operating Procedures. With the exception of permitted Master Concessionaire Ancillary Services, Subconcessionaire shall be the only provider of Stevedoring Operations on the Premises and on any Expansion Properties. Nothing in this Section will be interpreted to restrict Subconcessionaire’s ability to compete for additional work at the Facility or the Expansion Properties, to the extent Master Concessionaire conducts such a competition.

2.2 Commencement of Business. Subconcessionaire’s right to exercise the Subconcession shall begin on the first (1<sup>st</sup>) day of the Subconcession Term. Subconcessionaire shall be required to cause the Facility to be open for business on or before July 1, 2005.

2.3 Grant of Concession and Facility Work. In exchange for the grant of the Subconcession, Subconcessionaire agrees to perform the following “Facility Work”:

a. as and when requested by Master Concessionaire, but in no event more often than monthly, provide to Master Concessionaire any reports, budgets, sales figures, port usage numbers or other information relating to the Facility or expected future operation of the Facility as Master Concessionaire shall reasonably request to support Master Concessionaire’s preparation and presentation to the Authority of a master plan for the Port Property pursuant to the term of the Master Concession Agreement.

b. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before the Plan Submittal Date of each year of the Subconcession Term, present a proposed operating budget for the Facility for the upcoming calendar year in substantially the form and containing the information detailed in the budget approved concurrently herewith (the “**Budget**”) to Master Concessionaire for Master Concessionaire’s review and approval to support Master Concessionaire’s

preparation and presentation of a budget for the Port Facility pursuant to the terms of the Master Concession Agreement.

c. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before Plan Submittal Date of each year of the Subconcession Term submit Subconcessionaire's proposed pricing of products, services and other activities occurring at the Facility in substantially the form and containing the information detailed in the pricing schedule approved concurrently herewith (the "**Pricing Schedule**") to Master Concessionaire for Master Concessionaire's review and approval to support Master Concessionaire's preparation and presentation of a pricing schedule for the Port Facility pursuant to the terms of the Master Concession Agreement.

d. at any time that Master Concessionaire reasonably determines necessary, but in all events on or before the Plan Submittal Date of each year of the Subconcession Term, recommend operational policies for the Facility for the upcoming year including hours of operation, scope of services to be provided, rules for users of the Facility and such other general operational matters as to which Master Concessionaire would like to have Subconcessionaire's guidance in substantially the form and containing the information detailed in the operating procedures approved concurrently herewith ("**Operating Procedures**") to Master Concessionaire for Master Concessionaire's review and approval to support Master Concessionaire's preparation and presentation of operating procedures for the Port Facility pursuant to the terms of the Master Concession Agreement.

e. prepare and present to Master Concessionaire for Master Concessionaire's review, approval and submittal to the Authority, as and when reasonably necessary, amendments to the Pricing Schedule, the Budget, the Operating Procedures or other items relating to the Facility and previously approved by Master Concessionaire, but requiring modification by reason of subsequent events, new information or operational experience;

f. maintain, repair and otherwise keep the Facility (i) occupied by Subconcessionaire; (ii) available for use in the Stevedoring Operation; (iii) in good condition as required under Section 7.17;

g. operate and manage all aspects of the Facility under Subconcessionaire's control and involved in the Stevedoring Operation in accordance with the provisions of this Agreement, the Master Concession Agreement, the Master Plan, the Pricing Schedule, the Budget, the Operating Procedures and the Concession Purpose and otherwise in accordance with Applicable Laws and the Facility Operating Standard;

h. execute contracts as an independent contractor for the provision of operation and maintenance services at the Facility included as part of Subconcessionaire's Stevedoring Operation and permitted Ancillary Services, unless for the purpose of

reducing overall operating costs the Master Concessionaire has, in writing, directed that its prior approval is required for such particular contracts;

i. procure and maintaining permits, licenses, and approvals for the Stevedoring Operation at the Facility.

2.4 Scope of Discretion in the Performance of Facility Work. In connection with the performance of the Facility Work, Subconcessionaire shall exercise reasonable business judgment.

2.5 Exclusivity. The rights and privileges granted Subconcessionaire hereunder are exclusive with respect to conducting a Stevedoring Operation from the Premises other than Master Concessionaire permitted Ancillary Services. Nothing provided for herein shall prohibit Master Concessionaire from entering into other agreements with any other parties during the Subconcession Term for the provision of services to the Facility (including permitted Ancillary Services) or operation of the Facility.

2.6 Relocation/Surrender of Premises. Notwithstanding any other provision of this Agreement, Master Concessionaire shall have the right at any time during the term of this Agreement, to require Subconcessionaire to surrender any portion of the Premises if Master Concessionaire is required by the Authority to surrender such portion of the Premises in accordance with the provisions of the Master Concession Agreement. Master Concessionaire shall in no event be liable to Subconcessionaire for any inconvenience or loss of business as a result of Subconcessionaire being required to move or surrender any portion of the Premises, as set forth in the preceding sentence.

2.7 Failure to Approve Plans and Proposals. Master Concessionaire shall in no event be liable to Subconcessionaire for any inconvenience or loss of business as a result of any refusal of Master Concessionaire or of the Authority to approve a Budget, Master Plan, Operating Procedures, Fee Schedule or any other matters relating to the Facility or the operation thereof. However, if for any reason Master Concessionaire fails to approve a proposed modification to the Budget, Master Plan, Operating Procedure or Fee Schedule, then such items shall continued in effect as last approved.

2.8 Return of the Facility. Subconcessionaire shall, upon the termination of this Agreement, leave intact, undisturbed, and in good repair, normal wear and tear excepted, all fixtures, improvements, and installations, as well as all items comprising the same, pertaining to the Facility paid for by Master Concessionaire or the Authority on the Authority, City or Master Concessionaire property. Subconcessionaire agrees to remove all of its personal property (including personal property or equipment that has become a fixture and which was installed by Subconcessionaire at its cost and subject to the condition that Subconcessionaire repair any damage caused by removal) from the Premises within ninety (90) calendar days from the date of the termination of this Agreement.

2.9 No Termination by the Subconcessionaire. The Subconcessionaire shall not be entitled to terminate the Subconcession granted to Subconcessionaire hereunder for any

reason, including by reason of an Event of Default by Master Concessionaire hereunder, but agrees to instead look to the Subconcessionaire's other remedies against Master Concessionaire hereunder to enforce the Subconcessionaire's rights granted herein.

2.10 Changes in the Facility over the Term of the Subconcession. Over the term of the subconcession and with the addition of Expansion Properties, the Master Concessionaire may have to alter the boundaries of the Premises. However, during the Subconcession Term, Subconcessionaire will always be provided with approximately 30 contiguous acres suitable for conducting Stevedoring Operation and permitted Ancillary Services.

3. Use of Premises.

3.1 Permitted Uses.

a. Subject to the provisions of this Agreement, the Premises shall be used by Subconcessionaire during the Subconcession Term only for a Stevedoring Operation, together with such other uses and services to be provided from the Premises consistent with this Agreement and as Master Concessionaire may approve from time to time.

b. Without the prior written consent of Master Concessionaire, Subconcessionaire shall not at any time during the Subconcession Term vacate any portion of the Premises once Subconcessionaire is required to be open for business in such portion of the Premises. Notwithstanding the previous sentence, the parties understand that the Stevedoring Operation conducted by Subconcessionaire at the Port Facility is a seasonal business, which slows down and in some cases completely ceases during the winter months when water borne traffic cannot navigate waters to the Port Facility, and such slow downs or cessations of business during said months shall not be considered vacation of the Premises.

c. Subconcessionaire acknowledges that in order for the Authority to exercise its oversight obligation, the Authority may maintain an office on the Premises or the Expansion Properties, however the location and operation of the Authority's office shall not interfere with the Facility Work. All expenses related to the operation of the Authority's office shall be borne by the Authority.

3.2 Discontinuance of Services. If Master Concessionaire reasonably determines that any service, offered for sale or sold by Subconcessionaire that is not directly related to conducting a Stevedoring Operation is objectionable, unnecessary, inconsistent with the Facility Operating Standard or conflicts with any rights granted by Master Concessionaire to any other party (such grant not being in violation of the terms hereof), Subconcessionaire shall, upon written notice from Master Concessionaire, immediately discontinue such service or practice and Subconcessionaire agrees that it shall not thereafter display, offer for sale, or sell such service.

4. Term. This Agreement shall become effective upon execution by the parties hereto and continue for the Subconcession Term, unless sooner terminated in accordance with the terms and provisions hereof; provided, however, that in no event shall the term hereof continue after the expiration or earlier termination of the term of the Master Concession Agreement. The Subconcession Term shall be subject to three (3) twenty-five year extension periods. Each extension period shall be triggered immediately and without further action of either Master Concessionaire or Subconcessionaire upon the delivery by Master Concessionaire to Subconcessionaire of written notice that the Concession Term has been extended for a corresponding period under the Master Concession Agreement.

5. Subconcession Payments and Accounting Records.

5.1 Application of Revenues from the Facility. On the behalf of the Authority and Master Concessionaire, Subconcessionaire shall collect, and provide written confirmation of receipt of, all Gross Receipts earned by Subconcessionaire in connection with the Facility and the Ecorse Port. On or before the thirtieth (30th) day following the end of each calendar month, Subconcessionaire shall pay to Master Concessionaire six percent (6%) of all Gross Receipts received in that expired calendar month originating from the operation of the Facility and six percent (6%) of the Gross Receipts from Stevedoring Operations and Ancillary Services at the Ecorse Port, plus any additional amounts due Master Concessionaire from Subconcessionaire, and retain the balance. From amounts received, Master Concessionaire shall remit amounts due the Authority under the Master Concession Agreement.

5.2 Collection and Distribution of Capital Receipts. All Capital Receipts, if any, collected by Subconcessionaire for any reason shall be paid to Master Concessionaire. From such Capital Receipts, Master Concessionaire shall remit any amounts due the Authority under the Master Concession Agreement.

5.3 Books and Records/Right of Master Concessionaire and Authority to Audit. Subconcessionaire shall, at all times during the term hereof, maintain at the Premises, at an office in Detroit, Michigan or at the Ecorse Port, complete and accurate books and records of all receipts and disbursements from its Stevedoring Operations and Ancillary Services at the Facility and the Ecorse Port, in a form consistent with good accounting practice. Subconcessionaire's book and records shall be maintained in sufficient detail to allow Master Concessionaire and/or the Authority or their representatives to audit, in accordance with generally accepted auditing standards, Subconcessionaire's Gross Receipts. Subconcessionaire shall account for all receipts of any nature related to transactions in connection with this Agreement in a manner which segregates in detail those transactions from other transactions of Subconcessionaire and which supports the amounts reported to Master Concessionaire and the Authority for the immediately preceding month in a monthly "Receipts Report" schedule which is to be prepared by Subconcessionaire and submitted to Master Concessionaire and the Authority on or before the thirtieth (30th) day following the end of each month on a form to be agreed upon by Master Concessionaire and Subconcessionaire. At a minimum, Subconcessionaire's accounting for such receipts shall follow generally accepted accounting principles and shall include the following:

a. Serially numbered invoices, using a numbering system for transactions under this Agreement which is separate from any numbering system used by Subconcessionaire for other transactions ;

b. A compiled report of transactions from the Premises and from the Ecorse Port showing all Gross Receipts and all exclusions from Gross Receipts by category (as set forth in the definition of Gross Receipts), which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to Master Concessionaire and Authority on Subconcessionaire's monthly "Receipts Reports"; and

c. Such other records (including, but not limited to, original source documents) if any, which would normally be examined by an independent certified public accountant in performing an examination of Subconcessionaire's Gross Receipts in accordance with generally accepted auditing standards and the provisions of this Agreement.

5.4 Other Records. Master Concessionaire may require Subconcessionaire to keep other records to facilitate the accurate audit of Subconcessionaire's Gross Receipts hereunder. All such books and records, including the general ledger and bank statements and all federal, state and local tax returns relating to Subconcessionaire's sales, shall, upon ten (10) days advance written notice from Master Concessionaire, be made available, either at the Premises, at the Subconcessionaire's accounting office or, at the request and expense of Master Concessionaire, at the offices of Master Concessionaire, for inspection by Master Concessionaire and/or Authority through their duly authorized representatives at any time for up to three (3) years after the end of the period to which such books and records relate (and Subconcessionaire shall have no obligation to retain such books and records after the end of such three-year period unless there is a question or dispute concerning such books and records); provided, however, that any such inspection on the Premises or the Ecorse Port will be conducted during reasonable business hours and in such a manner and at such time as not to interfere unduly with the conduct of Subconcessionaire's business. Master Concessionaire shall further have the right, upon reasonable written notice to Subconcessionaire and at the sole cost of Master Concessionaire, as applicable, except as specified below, to examine or designate a representative to examine the books and records of Subconcessionaire which relate to its operations on the Premises or the Ecorse Port to determine the correctness of the Subconcession Payments paid by Subconcessionaire to Master Concessionaire for any or all periods preceding such examination. If, as a result of such examination, it is established that the Subconcession Payments for any calendar month have been underpaid to Master Concessionaire, Subconcessionaire shall forthwith, upon written demand from Master Concessionaire, pay the difference to Master Concessionaire, together with interest thereon at the Default Rate, from the date such amount or amounts should have been paid. Further, if any such examination establishes that Subconcessionaire has underpaid Subconcession Payments for any calendar quarter by five percent (5%) or more of the amount that should have been paid, then the entire expense of any such examinations shall be borne by Subconcessionaire. If Subconcessionaire fails to maintain adequate books and records at the Facility or the Ecorse Port as provided above,

Subconcessionaire shall reimburse Master Concessionaire and Authority for reasonable expenses incurred by representatives of Master Concessionaire and Authority in traveling to examine such books and records at a separate location whether or not any sums are found to be due and owing to Master Concessionaire; provided further that any such inspection at such separate location shall be conducted during reasonable business hours and in such a manner and at such time as not to interfere unduly with the conduct of Subconcessionaire's business. The rights of Master Concessionaire under this section shall survive the expiration or earlier termination of the term of this Agreement. In the event of any conflict between any provision of this Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Agreement shall control even where this Agreement references such principles or standards. In particular, without limitation, Subconcessionaire shall maintain all records required under this Agreement to the full extent required hereunder, even if some or all of such records would not be required under such general principals or standards.

5.5 Annual Certification of Fees. Within one hundred fifty (150) days after the close of each calendar year, Subconcessionaire at its own cost and expense shall provide to Master Concessionaire schedules of Gross Receipts and Subconcession Payments for such expired calendar year and a report on the audit of such schedules prepared by an independent certified public accountant certifying that such schedules have been audited in accordance with generally accepted auditing standards and the terms and provisions of this Agreement; including, without limitation, the definition of Gross Receipts. If such schedules indicate that the Subconcession Payments for any preceding calendar quarter have been overpaid, then the amount of overpayment shall be credited to the fees next due and owing from Subconcessionaire, unless the Subconcession term has expired, in which event such amount shall be promptly refunded by Master Concessionaire to Subconcessionaire. If such schedules indicate that the Subconcession Payments for any calendar year have been underpaid, then Subconcessionaire shall submit payment therefore to Master Concessionaire at the same time Subconcessionaire submits to Master Concessionaire the statements required under this section, together with interest on any underpaid Subconcession Payments at the Default Rate, from the date such fees or charges should have been paid. Master Concessionaire's obligation to refund overpayments due Subconcessionaire pursuant to this Section 5.5 shall be limited to the extent that Master Concessionaire has paid such Subconcession Payments to the Authority or any lien holder or lender and has not been able to recover such amounts.

5.6 Cash Handling Procedures. Subconcessionaire shall disclose and obtain Master Concessionaire approval of its cash handling procedures, and at all times observe and abide by such procedures, unless otherwise agreed with the Master Concessionaire.

5.7 Additional Sums Due Master Concessionaire. If Master Concessionaire has paid any sum or has incurred any obligation or expense for which Subconcessionaire agreed to pay or reimburse Master Concessionaire, or if Master Concessionaire is required or elects to pay any sum or incur any obligation or expense because of the failure, neglect or refusal of Subconcessionaire to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed additional fees due hereunder, and Subconcessionaire shall, within five (5)

business days of written notification by Master Concessionaire, reimburse Master Concessionaire therefor.

5.8 Sales, Use or Other Taxes.

a. Subconcessionaire shall be solely responsible for the payment of all sales, use or other taxes and assessments levied upon the fees and other charges payable by Subconcessionaire or payable to Subconcessionaire in connection with its operations at the Facility and the Ecorse Port or lease or rental taxes, if any, due in connection with amounts payable by Subconcessionaire hereunder together with any and all interest and penalties levied thereon.

b. The provisions of this paragraph shall survive the expiration or prior termination of this Agreement.

5.9 Letter of Credit. To secure the payment of that portion of Gross Receipts required by Section 5.1 above and the payment of Capital Receipts required by Section 5.2 above, Subconcessionaire will maintain a Letter of Credit made payable on demand by the Master Concessionaire. The Letter of Credit will be in an amount not less than the two highest consecutive monthly payments made to Master Concessionaire in the prior calendar year under Section 5.1 above, but not less than \$75,000. Master Concessionaire may call on the Letter of Credit only for the Subconcessionaire's non-compliance with Section 5.1 and 5.2 of this Agreement.

6. Improvements to Premises.

6.1 Improvements to be Constructed by Master Concessionaire.

a. Master Concessionaire shall be entitled to make such improvements or have such improvements on the Premises constructed or demolished as Master Concessionaire deems prudent or necessary and consistent with the Master Plan approved by the Authority and consistent with the Subconcessionaire's use of the Premises as described in this Agreement.

b. To the extent Subconcessionaire desires lighting, or additional electrical power, telephone outlets, computers or adjustments to the heating and air-conditioning system, additional cranes, fork lifts, loaders or other equipment, which in Subconcessionaire's sole discretion may be desirable to operate Stevedoring Operations at the Facility, Subconcessionaire can make such improvements, and any such improvements or services shall be made at Subconcessionaire's expense. Other than as described in paragraph 6.1(a), Subconcessionaire understands and agrees that Master Concessionaire shall not be obligated to provide any additional improvements or services of any type, character, or nature (including electrical or telephone outlets) on the Premises during the term of this Agreement. Subconcessionaire has inspected the Premises and the



improvements thereon and agrees that such improvements are satisfactory in their current conditions for Subconcessionaire's purposes.

c. Subconcessionaire shall have the right, at its own expense, to receive telephone service and to receive or install private communication or audio systems that Subconcessionaire may, in its sole discretion but consistent with the Master Plan, desire to conduct Stevedoring Operations.

#### 6.2 Improvements to be Constructed by Subconcessionaire.

a. The Subconcessionaire shall be provided Two Hundred Fifty Thousand Dollars (\$250,000.00) to fund any improvement identified in Exhibit C. Upon commencement of any improvements on the Premises, Subconcessionaire shall commence and thereafter complete at its own cost and expense with due dispatch the installation of all improvements, fixtures, furnishings, signage, trade fixtures, and equipment necessary to conduct its operations at the Premises.

b. Subconcessionaire agrees to submit to Master Concessionaire, in advance, all plans respecting any material modifications of or additions to the Facility. Any and all significant modifications and/or alterations to the Premises and/or Facility shall require the written consent of Master Concessionaire. Construction budgets, subcontractors, construction schedules, plans and specifications and architectural drawings shall be subject to approval of Master Concessionaire.

c. Subconcessionaire shall provide a report to Master Concessionaire identifying the improvements made by Subconcessionaire with the funds identified in Section 6.2a above, their cost, and any subcontracts or purchase orders funded. Until these funds are exhausted, Subconcessionaire will provide an annual report describing expenditures and remaining balance.

#### 6.3 Requirements and Procedures.

a. Approval Required. All improvements to the Premises, constructed, installed or altered thereafter by Subconcessionaire, and all furnishings, fixtures, signage, trade fixtures and equipment to be installed by Subconcessionaire on or in the Facility, and the plans and specifications therefor, must have been submitted to and approved in writing by Master Concessionaire prior to construction, alteration or installation, but only if the cost of these improvements, either individually or in the aggregate for any calendar year, exceeds Two Hundred Thousand Dollars (\$200,000), which amount shall be increased or decreased effective June 1 of each year during the term of this Agreement by the increase in the Consumer Price Index of the preceding year (where Consumer Price Index means the Bureau of Labor Statistics Consumer Price Index for the United States, All Urban Consumers, U.S. City Average, all items, 1982—1984). In the case of signage, the size, location, text, material, and appearance thereof shall also be subject to such approval, which shall not be unreasonably withheld. Following approval by Master Concessionaire, such improvements shall be made or

altered, and such furnishings, fixtures, signage, trade fixtures, and equipment shall be installed in strict accordance with such plans and specifications, and in accordance with all applicable statutes, ordinances, building and health codes, rules and regulations, and all applicable provisions of the Master Plan and the Master Concession Agreement as the same may be amended from time to time.

b. No Liens. Subconcessionaire shall obtain all necessary licenses and permits to accomplish such work and Subconcessionaire hereby warrants to Master Concessionaire that all such improvements to the Premises shall be free and clear of any claims, liens, and encumbrances and agrees to indemnify and save Master Concessionaire harmless from and against any and all losses, damages and costs, including attorneys' fees, with respect thereto. If any such claim or lien shall be filed against the Premises or any improvements thereto or Subconcessionaire's rights under this Agreement, Subconcessionaire shall, within ninety (90) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

c. Performance and Payment Bond. Prior to construction of any improvements at the Premises, Subconcessionaire shall post all applicable payment bonds in accordance with Applicable Laws.

d. Actions After Completion of Improvements. Subconcessionaire shall, within ninety (90) days following the completion of construction, installation or alteration of any improvements, fixtures, furnishings, signage, trade fixtures, and equipment on the Premises or in connection with the Facility, provide to Master Concessionaire a written statement setting forth the actual costs thereof, in such detail with respect to the cost of the various elements thereof as Master Concessionaire may require, and such statement shall be certified by an officer (if Subconcessionaire is a corporation), a partner (if a partnership), or the owner (if a sole proprietorship), of Subconcessionaire. Subconcessionaire shall also provide to Master Concessionaire, receipted invoices for labor and materials covering all improvements to the Premises or in connection with the Facility, including architectural and engineering fees, fixtures, furnishings, signage, trade fixtures and equipment. In addition, within ninety (90) days after completion of construction, Subconcessionaire shall, at its expense, provide Master Concessionaire with record drawings showing the "as built" condition of all improvements constructed by Subconcessionaire on the Premises in both hard copy and electronic format acceptable to Master Concessionaire. Subconcessionaire shall further provide Master Concessionaire with such information and supporting documents pertaining to the cost and replacement value of the improvements to the Premises as either may from time to time reasonably request.

#### 6.4 Time Schedule-Preparation and Approval of Plans and Specifications.

a. If Master Concessionaire disapproves any portion of the plans and specifications for which approval is required, Subconcessionaire shall promptly submit necessary modifications and revisions thereof. No changes or alterations shall be made in

said plans or specifications after approval by Master Concessionaire without the approval of such changes or alterations by Master Concessionaire. One copy of plans and specifications for all improvements or subsequent alterations thereof shall, within fifteen (15) days after their approval by Master Concessionaire, be signed by Subconcessionaire and deposited with Master Concessionaire as an official record thereof.

b. The approval by Master Concessionaire of any plans and specifications submitted by Subconcessionaire shall not constitute the assumption of any liability by Master Concessionaire for the compliance or conformity of such plans and specifications with applicable building codes, electrical standards, zoning regulations and municipal, county, state and federal laws, ordinances and regulations, including, without limitation, the Americans with Disabilities Act, P.L. 101—336, 104 Stat. 327 (1990) as it may be amended from time to time, or any accessibility guidelines promulgated thereunder, or for their accuracy or suitability for Subconcessionaire's intended purpose, and Subconcessionaire shall be solely responsible for such plans and specifications. The approval of such plans and specifications by Master Concessionaire shall not constitute a waiver of the right of Master Concessionaire thereafter to require Subconcessionaire, at Subconcessionaire's expense, to amend the same so that they comply with Applicable Laws.

7. Obligations of Subconcessionaire.

7.1 Facility Open to the Public. Subconcessionaire shall, at all times, operate the Facility as a public Port Facility with open access to all customers during hours specified in the Operating Procedures as then approved by the Authority. If, without Master Concessionaire's prior written consent, Subconcessionaire closes the Facility for more than two (2) business days in any calendar quarter on which days the Operating Procedures do not provide for closure, then for each day that the Facility is closed, Subconcessionaire shall be liable to Master Concessionaire for damages in an amount equal to one-thirtieth (1/30<sup>th</sup>) of the average Subconcession Payments due Master Concessionaire for the four (4) preceding calendar months during which the Facility was open for business for the entire calendar month. If the Facility has not been open for business during four (4) calendar months, then per diem damages shall be equal to one-thirtieth (1/30<sup>th</sup>) of the average Subconcession Payments that were projected in the Budget for the month of wrongful closure. Closure by reason of force majeure events, including strikes, war, government directives unrelated to Subconcessionaire's activities at the Facility, strike, weather making operations impractical or comparable acts of God shall not constitute wrongful closure by Subconcessionaire and shall not entitle Master Concessionaire to recover damages.

7.2 Type of Operation. Subconcessionaire shall at all times during the Subconcession Term hereof maintain the Premises in a usable manner and shall keep it in a safe, clean, orderly, and suitable condition satisfactory to Master Concessionaire, with all conditions and activities at the Premises conforming to all Applicable Laws and requirements of Master Concessionaire under the Master Concession Agreement. Subconcessionaire shall maintain a sufficient number of trained employees at the Facility during hours of operation to ensure that

customers of Subconcessionaire and users of the Facility will receive appropriate service during hours of operation. Any item of merchandise or service which Master Concessionaire deems offensive to the general public shall be promptly and permanently removed by Subconcessionaire from the Premises upon notice from Master Concessionaire. Subconcessionaire shall not permit any nuisance, waste, illegal activity or injury to be committed on the Premises. Subconcessionaire shall conduct the Stevedoring Operations from the Facility in substantially the same manner as Subconcessionaire has operated its business at the Ecorse Port.

7.3 Reasonable Prices. The price of services offered from the Premises shall conform to those provided for in the Pricing Schedule as then approved by the Authority and Master Concessionaire.

7.4 Standards of Service. Master Concessionaire shall maintain and operate the Facility and otherwise perform the Facility Work in a reasonably safe manner and with a reasonable standard of care necessary to make the Facility generally available for public use, consistent with the plans approved by the Port Authority.

7.5 Safety and Security Rules. Subconcessionaire shall advise and instruct its employees and agents to abide by and observe the safety and security rules for their operations, work and services specified in the approved Operating Procedures. Subconcessionaire will file all necessary reports and other documents relating to the ownership, occupation, maintenance, expansion, sale or operation of the Facility, with all applicable governmental authorities when required to do so by Applicable Laws with copies provided to the Authority as appropriate, and provide a copy of all such documentation to Master Concessionaire.

7.6 Port Security. Subconcessionaire shall file or cause to be filed such reports and undertake such actions as shall be required under applicable law for purposes of causing the Premises and the operations of the Facility to comply with Applicable Laws relating to securing the Facility from terrorist activities, vandals and criminal acts.

7.7 Procurement of Licenses and Permits. Except as the Parties otherwise agree, Subconcessionaire shall procure, pay for and maintain, in its own name, all federal, state, and/or local governmental identification numbers, license(s), plans(s), and permit(s) necessary, convenient, and/or incidental to do the Facility Work and to keep the Facility operating. Subconcessionaire shall comply and abide with all of the terms and conditions of said licenses, plans, and permits. In addition, Subconcessionaire shall, at its own cost and expense, procure and keep in force during the term of this Agreement, all necessary registrations, certificates, bonds, and other authorizations as are required by law in order for Subconcessionaire to operate from the Premises granted hereunder.

7.8 Environmental Compliance.

a. The Baseline Assessment addresses only the Larger Parcel. The Master Concessionaire shall cause a final baseline assessment to be completed, which will address all Port Property. In the meantime, Subconcessionaire will confine its Stevedoring Operations and permitted Ancillary Services to the Larger Parcel only.

Master Concessionaire shall, at its sole cost and expense, engage a qualified environmental consulting firm to prepare a final baseline assessment (phase 2) for all Port Property, and will have the baseline assessment completed within forty-five (45) days of the execution of this Agreement. A copy of this Final baseline assessment will be promptly provided to Subconcessionaire.

b. After the effective date of this Agreement, Subconcessionaire shall be responsible for compliance with Environmental Laws for the Facility except to the extent that responsibility for compliance has been retained by the Authority. Master Concessionaire shall not, by reason of this Agreement, assume any liability for Environmental Compliance, Hazardous Materials at the Facility, or any breach of Environmental Laws relating to the Facility or operations thereon. At the direction of Master Concessionaire, Subconcessionaire shall close the Facility until any Hazardous Materials or comparable potentially hazardous or unlawful condition is remediated.

c. Any contamination discovered during the final baseline assessment which was not caused by Subconcessionaire, along with any required remediation thereof, shall not be the responsibility of Subconcessionaire.

7.9 Hazardous Cargo. Subconcessionaire shall be responsible for all federal and state authority reporting and compliance related to the handling of Hazardous Cargo at the Facility.

7.10 Conduct of Operations/Independent Contractor Status. Subconcessionaire shall perform, render and carry out at all times the Facility Work as an independent contractor. Subconcessionaire shall, at all times, have and exercise exclusive direction and control of the Facility Work and exercise exclusive control over its individual work force and labor relations. While Subconcessionaire may from time to time receive advisory communications pertaining to the operation of the Facility from the Authority or Master Concessionaire, compliance by Subconcessionaire with such communications shall not effect their status as an independent contractor.

7.11 Protection of Authority's Title in Premises. Subconcessionaire shall not knowingly suffer or permit the Facility, or any portion thereof, to be used by the public, as such, without restriction or in such manner as might impair the Authority's title to the Premises or any portion thereof, or in such manner as may reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

7.12 Uses Prohibited. Subconcessionaire shall comply with all legal requirements with respect to the Premises and the Facility. Subconcessionaire shall use the Facility in a manner that will not cause a cancellation of any insurance policy covering the Facility, or any part thereof.

7.13 Waste and Nuisance Prohibited. During the Subconcession Term, Subconcessionaire shall comply with all Applicable Laws affecting the Facility, the breach of

which might result in any penalty to the Authority or Master Concessionaire, forfeiture of the Authority's interest in the Premises, restriction against the Authority's interest in the Premises or the Authority's or City's adjoining land or breach by Master Concessionaire under the Master Concession Agreement.

7.14 Signs and Graphics. In entering into this Agreement, Subconcessionaire acknowledges Authority's desire to maintain a high level of aesthetic quality in all concession facilities throughout the Facility. Master Concessionaire and the Authority shall have the right at any time during the term of this Agreement to enter the Premises to ensure that Subconcessionaire's operations conform to the approved Operating Procedures. Immediately upon its receipt of written notice from Master Concessionaire that Subconcessionaire's display, design, or operations do not conform to a high standard, Subconcessionaire shall make the modifications necessary to achieve conformance.

7.15 Manager. The management, maintenance, and operation of the Premises and the Subconcession conducted thereon shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent, and experienced manager who shall at all times be subject to the direction and control of Subconcessionaire. Subconcessionaire will cause such manager to be available at the Premises during normal business hours, and Subconcessionaire will at all times during the absence of such manager assign or cause to be assigned a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties. Such manager shall be authorized by Subconcessionaire to receive payments, accept notices, provide direction and otherwise agree to matters relating to the Subconcessionaire's activities under this Agreement.

7.16 Personnel.

a. Subconcessionaire shall, in its operation on the Premises under this Agreement, employ or permit the employment of only such personnel as will assure a reasonable standard of service to the public. All such personnel, while on or about the Premises, shall be appropriately attired (with appropriate identification badge displaying no less than Subconcessionaire and employee name). No personnel employed by Subconcessionaire, while on or about the Facility, shall be permitted to solicit business in an inappropriate manner within the Premises or elsewhere on Port Property. Subconcessionaire shall maintain a sufficient number of trained personnel to ensure that customers of Subconcessionaire will receive appropriate service at all times and will perform such background checks as shall be reasonably required to confirm that such personnel will not engage in criminal activity at the Facility.

b. Subconcessionaire may operate this Subconcession at the Premises through its own employees, leased or temporary employees or independent contractors. Subconcessionaire shall comply with the requirements of all statutes, ordinances, regulations and rules applicable to its employment practices in connection with the operation of this Subconcession including, without limitation, the Fair Labor Standards Act, shall pay all appropriate federal and state employment and withholding taxes, and shall maintain records demonstrating compliance with the foregoing. All such records

shall, upon reasonable notice from Master Concessionaire, be made available, either at the Premises, or, at the request of Master Concessionaire, at the offices of Master Concessionaire or the Authority, for inspection by Master Concessionaire and/or Authority, through their duly authorized representatives, as often as Master Concessionaire shall request for a period of up to three (3) years after the end of the Subconcession Term.

7.17 Maintenance of Premises/Utilities.

a. Except for such maintenance which is the responsibility of Master Concessionaire in accordance with the terms of this Agreement, Subconcessionaire shall, at its own cost and expense, at all times during the term hereof, be responsible for all repairs, structural or otherwise, required to maintain the Premises and the Facility in good, usable and working condition, and all improvements, furnishings, fixtures, trade fixtures, equipment, inventory, displays and other property on the Premises in a safe, clean, orderly, and attractive condition and in good working order. The Facility shall be maintained in substantially the same or better condition as Subconcessionaire maintains the Ecorse Port, and as required by the Master Concession Agreement and the Facility Operating Standard. Subconcessionaire's obligation to maintain the Facility shall include, without limitation, dredging ship channels, turning basins and filing and grading land therefore, and Subconcessionaire shall be solely responsible for all janitorial services, waste removal and interior repairs in connection therewith. Subconcessionaire's maintenance obligation shall include the obligation to maintain improvements on the Facility and for use in connection with the Subconcession, including painting and repair or replacement of windows, furnaces, air conditioning systems, roofs and other capital items that have an actual useful expected life of less than the Subconcession Term (assuming the exercise of all extension options). Unless specifically excluded from the Facility by agreement of Master Concessionaire and Subconcessionaire, all improvements on the Premises shall be deemed for use by Subconcessionaire in connection with the Subconcession.

b. Subconcessionaire agrees to repair promptly, at its sole cost and expense and in a manner acceptable to Master Concessionaire, any damage caused by Subconcessionaire or any of its officers, agents, employees, contractors, subcontractors, licensees or invitees to the Facility or any improvements or property located thereon.

c. Master Concessionaire or the Authority or their authorized agents may, after advance notice, enter upon the Premises during normal business hours to determine if maintenance is being performed in accordance with the terms of this Agreement. In the exercise of Master Concessionaire's reasonable judgment, if Master Concessionaire determines that said maintenance is not satisfactory, Master Concessionaire shall so notify Subconcessionaire in writing. If said maintenance is not performed by Subconcessionaire to the satisfaction of Master Concessionaire within ninety (90) days of receipt of such written notice, Master Concessionaire or its agents shall have the right (in addition to any other remedy hereunder) to enter upon the

Premises and perform such maintenance, and Subconcessionaire agrees to promptly reimburse Master Concessionaire for the cost therefor, plus ten percent (10%) thereof for administrative overhead.

d. Any hazardous or potentially hazardous condition at the Facility or in the areas surrounding the Premises which has been caused by Subconcessionaire's operation or possession of the Premises or the action of Subconcessionaire, its invitees, employees, agents or other third parties on the Premises, and which was not caused by the Authority or Master Concessionaire, shall be corrected by Subconcessionaire as soon as practicable upon receipt of written notice from Master Concessionaire. If Master Concessionaire, exercising reasonable judgment, determines that the Premises must be closed because of any condition described in this Agreement, Subconcessionaire shall close the Premises until such hazardous or potentially hazardous condition is removed. Such closure shall not relieve Subconcessionaire from liability under Section 11.

e. The cost of all utilities used or consumed on the Premises that are provided to Subconcessionaire hereunder shall be borne by Subconcessionaire and separately sub-metered at Master Concessionaire's expense to the extent that there are other parties performing services on the Premises.

7.18 Customer Complaints. If any written customer complaint with respect to Subconcessionaire's operations on the Premises is delivered to Subconcessionaire (or to Master Concessionaire or Authority and then forwarded to Subconcessionaire), Subconcessionaire agrees that it shall promptly respond in writing to such complaint and make a reasonable good faith attempt to explain, resolve or rectify the cause of the complaint. Additionally, Subconcessionaire shall provide to Master Concessionaire, without further demand, a copy of each such complaint and its written response thereto.

7.19 Governmental Notices. If any state, federal, or local governmental agency issues any notices of violation or non-compliance, orders of withdrawal or cessation, or any other citations, Subconcessionaire shall immediately notify Master Concessionaire of the governmental action, and follow any non-written notification with written notification within two (2) Business Days.

7.20 Safety and Security Rules. Subconcessionaire shall advise and instruct Subconcessionaire's employees and agents to abide by and observe the safety and security rules for their operations, work and services specified in the approved Operating Procedures, which shall at least be consistent with the requirements of Applicable Laws and with the safety and security rules employed at the Ecorse Port as of the date hereof. Subconcessionaire will file all necessary reports and other documents relating to the ownership, occupation, maintenance, expansion, sale or operation of the Facility, with all applicable governmental authorities when required to do so by Applicable Laws with copies provided to the Authority as appropriate and provide a copy of all such documentation to Master Concessionaire.

7.21 Preference for Facility. When routing customer traffic between the Facility and any other port facility, Subconcessionaire shall direct such traffic to the Facility to



the extent that the Facility is reasonably available. Subconcessionaire shall not show any pricing preference to customers with respect to another port facility, it being agreed that Subconcessionaire shall promote its Stevedoring Operations at the Facility, with other port facilities serving a support function when the Facility is at capacity. Subconcessionaire will use the same tariff schedule at both the Facility and the Ecorse Port.

8. Obligations of Master Concessionaire.

8.1 Master Concessionaire's Master Plan Obligation. Master Concessionaire shall be responsible for demolition and new improvements to the Premises provided for in the Master Plan and in this Agreement.

8.2 Master Concession Agreement. Master Concessionaire shall not do anything that will cause a default under the terms of the Master Concession Agreement, or that might otherwise adversely affect the ability of Subconcessionaire to operate a Stevedoring Operation from the Premises.

8.3 No Competing Businesses. Master Concessionaire shall not allow any other person or entity to use the Premises or any Expansion Properties for a Stevedoring Operation, unless Subconcessionaire consents in writing, other than permitted Master Concessionaire Ancillary Services.

8.4 No Other Obligation of Master Concessionaire or Authority.

a. Subconcessionaire acknowledges that Master Concessionaire has not made any representations or warranties concerning the suitability of the Premises for Subconcessionaire's use or for any other use, and that except as expressly provided in this Agreement, Master Concessionaire shall not have any obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Premises or any improvements, furnishings, fixtures, trade fixtures or equipment constructed, installed or used on or in the Premises or in connection with the Facility.

b. Subconcessionaire hereby confirms that Subconcessionaire has made its own investigation of all the costs of doing business under this Agreement, including the costs of constructing improvements to the Premises, and the costs of furnishings, fixtures, trade fixtures, signs, inventory and equipment, marketing, licenses, and government approvals needed to operate the Premises and Facility hereunder, that Subconcessionaire has done its own projections of the volume of business Subconcessionaire expects to generate in operating from the Premises hereunder, that Subconcessionaire is relying on its own business judgment concerning its prospects for operating on the Premises under this Agreement on a profitable basis, and that Master Concessionaire has not made any representations or warranties with respect to any such matters.

c. Master Concessionaire does not represent or warrant the accuracy of any statistics or projections relating to the Facility and its operations which may have

been provided to Subconcessionaire by Master Concessionaire or the Authority or anyone on behalf of either, and neither Master Concessionaire nor Authority shall be responsible for any inaccuracies in such statistics or their interpretation.

d. All statements contained in this Agreement, or otherwise made by Master Concessionaire or anyone on behalf of Master Concessionaire concerning any measurement relating to the Premises or any other area of the Expansion Properties, are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by Subconcessionaire under or in connection with this Agreement.

e. Neither Master Concessionaire nor the Authority shall be liable to Subconcessionaire for any loss of business or damages sustained by Subconcessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of the Facility.

9. Security for Performance. In order to secure Master Concessionaire's faithful performance of the terms of this Agreement, Master Concessionaire shall cause the Authority to agree that upon any default by Master Concessionaire under the terms of the Master Concession Agreement, or the bankruptcy, receivership or assignment for the benefit of creditors of Master Concessionaire, that the Authority shall honor the terms of this Subconcession Agreement directly and, provided that Subconcessionaire is not otherwise in default hereunder, agree not to terminate the Subconcession.

10. Rights of Authority and Master Concessionaire to Repair or Alter Facilities. In the exercise of the Concession, Master Concessionaire shall not unreasonably interfere with Subconcessionaire's Stevedoring Operations.

10.1 Ancillary Services. Master Concessionaire shall have the right to, provide or engage other parties to provide, Subconcessionaire Ancillary Services at the Facility or from any portion of the Port Property not included as part of the Premises, but only if said operations do not, to Master Concessionaire's knowledge, interfere with the Subconcessionaire's Stevedoring Operations. Subconcessionaire shall reasonably cooperate with Master Concessionaire and its Affiliates, licensees, lessees and agents providing Ancillary Services at the Port Property.

10.2 Grants of Easements, Licenses and Estoppels. As reasonably requested by Master Concessionaire, Subconcessionaire shall execute such consents, licenses, estoppels and other agreements in connection with any efforts to satisfy the objectives set forth in the Master Plan, including Master Concessionaire's entry into Subconcession Agreements with the providers of Ancillary Services, financing, constructing or demolishing additional improvements on the Premises or any portion of the Expansion Properties not included as part of the Premises or integrating operations on the Premises with operations of the Facility or any Ancillary Services on the Expansion Properties.

11. Indemnification and Insurance.

11.1 Indemnification by Subconcessionaire. Subconcessionaire shall indemnify, defend and hold completely harmless Master Concessionaire, the Authority, the City and the members (including without limitation, all members of the governing board of Authority, the Detroit City Council and the advisory committees of each), officers, agents and employees of each, from and against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities (including statutory liability and liability under workers' compensation laws), and expenses (including all costs for investigation and defense thereof, including but not limited to court costs, reasonable expert witness fees and attorneys' fees) which may be incurred by, charged to, or recovered from any of the foregoing:

a. arising directly or indirectly out of Subconcessionaire's use, occupancy or maintenance of the Premises, including any improvement thereto, or Subconcessionaire's operations at the Facility or in connection with any of Subconcessionaire's rights and obligations contained in this Agreement, including, but not limited, to any and all claims for damages as a result of the injury to or death of any person or persons, or damage to any property which arises as a result of any act or omission on the part of Subconcessionaire or its officers, partners, employees, agents, contractors, subcontractors, licensees or invitees, regardless of where the damage, injury or death occurred, unless such claim, suit, demand, judgment, loss, cost, fine, penalty, damage, liability or expense was proximately caused solely by the negligence of Master Concessionaire and/or the Authority or by the joint negligence of Master Concessionaire and/or the Authority and any person other than Subconcessionaire or Subconcessionaire's officers, partners, employees, agents, contractors, subcontractors, licensees or invitees;

b. arising out of the failure of Subconcessionaire to keep, observe or perform any of its obligations under this Agreement. Master Concessionaire and the Authority shall give Subconcessionaire reasonable notice of any suit or claim for which indemnification will be sought under this Agreement, allow Subconcessionaire or its insurer to compromise and defend the same to the extent of its interests and reasonably cooperate with the defense of any such suit or claim. In carrying out its obligations under this Agreement, Subconcessionaire shall use counsel reasonably acceptable to Master Concessionaire and the Authority; or

c. occurring after the effective date of this Agreement by reason of the release of Hazardous Materials or the breach of Environmental Laws at the Facility arising by reason of actions of Subconcessionaire or its employees, agents, customers, invitees or other third parties at the Facility, provided that such claims, damages or losses are not solely the result of the acts of Master Concessionaire or its agents, licensees or invitees.

11.2 Indemnification by Master Concessionaire. Master Concessionaire shall indemnify, defend and hold completely harmless Subconcessionaire and its officers, agents and employees from and against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities (including statutory liability and liability under workers'

compensation laws), and expenses (including all costs for investigation and defense thereof, including but not limited to court costs, reasonable expert witness fees and attorneys' fees) which may be incurred by, charged to or recovered from any of the foregoing arising solely and directly out of Master Concessionaire's use, occupancy or maintenance of the Premises:

a. any and all claims for damages as a result of the injury to or death of any person or persons, or damage to any property which arises as a result of any act or omission on the part of the Master Concessionaire or its officers, partners, employees, licensees or invitees, regardless of where the damage, injury or death occurred, unless (i) such claim, suit, demand, judgment, loss, cost, fine, penalty, damage, liability or expense was proximately caused by the negligence of Subconcessionaire and/or any person other than Master Concessionaire or Master Concessionaire's officers, partners, employees, licensees or invitees and (ii) which results in damages not otherwise covered by insurance policies maintained or required to be maintained by Subconcessionaire under any agreement relating to the Premises; or

b. arising out of the failure of Master Concessionaire to keep, observe or perform any of its obligations under this Agreement. Subconcessionaire shall give Master Concessionaire reasonable notice of any suit or claim for which indemnification will be sought under this Agreement, allow Master Concessionaire or its insurer to compromise and defend the same to the extent of its interests and reasonably cooperate with the defense of any such suit or claim.

### 11.3 Liability Insurance.

a. Subconcessionaire, at its own cost and expense, shall purchase liability insurance (any auto, including owned autos, non—owned autos and hired autos), and commercial general liability insurance protecting Subconcessionaire, Master Concessionaire, the Authority and the City of Detroit, Michigan, and the members (including, without limitation, all members of the governing board of Authority, the City of Detroit Council and the advisory committees of each), officers, agents and employees of each, from and against any and all liabilities arising out of or relating to Subconcessionaire's use or occupancy of, or to the conduct of its operations on, the Premises. Such insurance shall be maintained by Subconcessionaire throughout the term of this Agreement. Limits of liability thereunder shall not be less than (i) the greater of One Million and No/100 Dollars (\$1,000,000.00) increased or decreased on each annual anniversary of the date hereof by the increase in the Consumer Price Index of the preceding year (where Consumer Price Index means the Bureau of Labor Statistics Consumer Price Index for the United States, All Urban Consumers, U.S. City Average, all items, 1982—1984), or (ii) such greater amount as Subconcessionaire has last purchased with respect to the Ecorse Port combined single limit or its equivalent, per occurrence, with such self—insured retention or deductible as may from time to time be acceptable to Master Concessionaire and the Authority, and the policy shall be in a form and with a company or companies acceptable to Master Concessionaire and the Authority, and with contractual liability coverage for Subconcessionaire's covenants to

and indemnification of Master Concessionaire, the Authority and the City under this Agreement. This insurance shall provide that it is the primary insurance with respect to any other valid and collectible insurance Master Concessionaire, Authority or the City may possess, including any self-insured retention or deductible Master Concessionaire, the Authority or the City may have, and that any such other insurance Master Concessionaire, the Authority or the City do possess shall be considered excess insurance only.

b. If the nature of Subconcessionaire's use of the Facility or business operations at the Facility are such as to place any or all of its employees under the coverage of workers' compensation or similar statutes, Subconcessionaire shall also purchase workers' compensation or similar insurance with a company or companies acceptable to Master Concessionaire and the Authority affording the required statutory coverage and containing the requisite statutory limits to be effective at least twenty (20) days prior to the commencement of any construction or installation on the Premises, whichever first occurs, and to be maintained by Subconcessionaire throughout the term of this Agreement.

c. The declarations page(s) from all insurance policies obtained by Subconcessionaire in accordance with the provisions of this Agreement shall be furnished to Master Concessionaire and the Authority at least fifteen (15) days prior to the commencement of any construction or installation on the Premises, whichever first occurs, and at least thirty (30) days prior to the expiration or termination of the coverage provided under any prior policy. Such declarations page(s) shall indicate that Master Concessionaire, the Authority, the City and the members (including, without limitation, all members of the governing board of the Authority, the Detroit City Council, and the advisory committees of each), officers, employees and agents of each are named as additional insureds. Each declarations page shall indicate that such insurance coverage will not be reduced or canceled without having first given at least thirty (30) days' prior written notice to Master Concessionaire and the Authority. Master Concessionaire shall have the right to reasonably alter the monetary limits or coverages herein specified from time to time during the term of this Agreement and Subconcessionaire shall comply with all reasonable requests of Master Concessionaire with respect thereto.

#### 11.4 Property Insurance.

a. Subconcessionaire shall, at its sole cost and expense, obtain and maintain in effect through the term of this Agreement, for the benefit of Subconcessionaire, Master Concessionaire, the Authority, their lenders from time to time, and the trustee of certain of the Authority's outstanding revenue bonds, as their interests may appear, property insurance on all improvements, furnishings, fixtures, trade fixtures, signs, equipment and other personal property currently existing or hereafter installed at the Facility, on a replacement cost basis, in such form and with such company or companies as Master Concessionaire shall approve, with a deductible which does not exceed one percent (1%) of such replacement cost. Such insurance shall be maintained

by Subconcessionaire throughout the term of this Agreement. Notwithstanding any thing in this Agreement to the contrary, Subconcessionaire shall not be required to insure any property, improvements or operations of Master Concessionaire or any other person or entity, or any part of the Premises that are being occupied by Master Concessionaire or any other person or entity.

b. On the date hereof and at least thirty (30) days prior to the expiration of any policy or policies theretofore provided by Subconcessionaire under this Agreement, Subconcessionaire shall furnish to Master Concessionaire and the Authority the declarations page(s) from the insurance policy or policies evidencing such coverage, and such declarations page(s) shall indicate that Subconcessionaire, Master Concessionaire, the City, the Authority, their lenders from time to time, and the trustee of certain of Authority's outstanding Facility revenue bonds are named as loss payees as their interests may appear, and that the policy or policies will not be canceled or reduced without thirty (30) days' prior written notice thereof to Master Concessionaire and the Authority.

c. Subconcessionaire, on behalf of itself and its insurance carrier(s), hereby waives any and all rights of subrogation which such insurance carrier(s) may have against Master Concessionaire, the Authority or the City for any loss of or damage to property each may suffer as a result of any fire or other peril normally insured against under a policy of property insurance. Subconcessionaire, on behalf of itself and its insurance carrier(s), hereby waives any and all rights of recovery which Subconcessionaire may have against Master Concessionaire for any loss of or damage to property Subconcessionaire may suffer as a result of any fire or other peril to the extent such fire or other peril arises as a result of any act or omission of Master Concessionaire or its licensees or invitees and Subconcessionaire is compensated for such loss or damage from the proceeds of any applicable policy of property insurance; provided, however, that such waiver shall only apply to the extent permitted by such applicable insurance policy without loss of any insurance coverage.

11.5 Right of Master Concessionaire or Authority to Purchase. If Subconcessionaire does not comply with its covenants made in this Section 11, Master Concessionaire shall have the right, but not the obligation, to cause insurance as aforesaid to be issued, and in such event Subconcessionaire shall pay the premium for such insurance upon the demand of Master Concessionaire.

11.6 Member Protection. No recourse shall be had against any past, present or future member, officer, employee or agent, of the Authority or Master Concessionaire, as such, either directly or through the Authority or Master Concessionaire or otherwise, for any claim arising out of Subconcessionaire's occupancy of the Premises or its operations at the Facility, or for any sum that may be due and unpaid by the Authority or Master Concessionaire. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Authority or Master Concessionaire member, officer, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for

any claim arising out of Subconcessionaire's operations at the Premises or for the payment of or to the Authority or Master Concessionaire, or any receiver therefor or otherwise, of any sum that may remain due and unpaid by the Authority or Master Concessionaire, is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement.

11.7 Insurance and Indemnification Obligations of Other Occupants. Master Concessionaire agrees to impose the same obligations to maintain insurance and to indemnify as specified in this Agreement on any and all persons or entities occupying any portion of the Premises or operating from any part of the Premises.

11.8 Survival of Provisions. The provisions of this Section 11 shall survive the expiration or earlier termination of this Agreement.

12. Damage or Destruction.

12.1 Damage or Destruction of Improvements. The damage, destruction, or partial destruction of any improvements which are on the Premises shall not release or diminish Subconcessionaire's obligations hereunder, except as hereinafter expressly provided. Should the improvements to the Premises or its furnishings, fixtures, signage, trade fixtures, equipment and other personal property, or any part of thereof, be destroyed or damaged, whether or not said damage or destruction is covered by insurance, Subconcessionaire shall, at its sole cost and expense, but with the right to use all available insurance proceeds under policies maintained by Subconcessionaire, reconstruct all improvements to the Premises and replace all furnishings, fixtures, signage, trade fixtures, equipment and other personal property, with all such replacements being of equal quality to those originally installed by Subconcessionaire in the Premises. If Subconcessionaire fails to repair or replace such improvements in accordance with a reasonable schedule approved by Master Concessionaire, Master Concessionaire shall have the right (but not the obligation) to make such repairs and/or replacement and recover from Subconcessionaire the cost and expense thereof.

13. Default by Subconcessionaire.

13.1 Events of Default. Any one of the following events shall constitute Subconcessionaire Default and after the expiration of applicable cure periods an Event of Default hereunder:

a. The failure of Subconcessionaire to make any payment required to be made by Subconcessionaire hereunder when due as herein provided, which failure is not remedied within fifteen (15) days after receipt by Subconcessionaire of Master Concessionaire's written demand;

b. The failure of Subconcessionaire to provide any financial report required to be submitted to Master Concessionaire or any officer or employee thereof by Subconcessionaire when due as herein provided, which failure is not remedied within ten (10) days after receipt by Subconcessionaire of Master Concessionaire's written demand;

c. The failure of Subconcessionaire to keep, observe or perform any of the other covenants or agreements herein required to be kept, observed or performed by Subconcessionaire, and continued failure to observe or perform any such covenant or agreement after a period of thirty (30) Business Days after receipt by Subconcessionaire of Master Concessionaire's written demand, unless it is impracticable to remedy said default within thirty (30) days, in which case, Subconcessionaire must provide Master Concessionaire with an estimated time to cure the default (not to exceed six (6) months from the date that Master Concessionaire received Master Concessionaire's written demand) and demonstrate that it has taken action to cure within said thirty (30) days;

d. The repeated failure (defined for this purpose as at least three (3) such failures within any consecutive twelve-month period) to make any payment required to be made by Subconcessionaire hereunder when due as herein required (provided that notice of such failure shall have been given to Subconcessionaire, but whether or not Subconcessionaire shall have remedied any such failure within the time provided for in such notice);

e. The repeated failure (defined for this purpose as at least three (3) such failures within any consecutive twelve-month period) to keep, observe or perform any of the other covenants or agreements herein contained to be kept, observed or performed by Subconcessionaire (provided that notice of such failure shall have been given to Subconcessionaire, but whether or not Subconcessionaire shall have remedied any such failure within the time provided for in such notice);

f. Abandonment of the Premises and/or Facility at any time prior to the expiration of the Subconcession Term without the prior written consent of Master Concessionaire, except as permitted under the provisions of this Agreement;

g. Commencement by Subconcessionaire or by any guarantor or surety of this Agreement, in any court pursuant to any statute of the United States or of any State, territory or government, of an insolvency or bankruptcy proceeding, including, without limitation, a proceeding for liquidation, reorganization or for the adjustment of its indebtedness;

h. Commencement of any insolvency or bankruptcy proceeding (including, without limitation, a proceeding for liquidation, reorganization or for adjustment of indebtedness) against Subconcessionaire or any guarantor or surety of this Agreement, if an order for relief is entered against such party and the same is not stayed or vacated within thirty (30) days after entry thereof, or if such party fails to secure a discharge of the proceedings within sixty (60) days after the filing thereof;

i. Insolvency or inability to pay debts as they come due of Subconcessionaire or any guarantor or surety of this Agreement;



j. The making by Subconcessionaire or by any guarantor or surety of this Agreement of an assignment for the benefit of its creditors or the filing of a petition for or the entering into of an arrangement with its creditors;

k. The appointment or sufferance of a receiver, trustee or custodian to take possession of all or substantially all of the property of Subconcessionaire or of any guarantor or surety of this Agreement, whether or not judicial proceedings are instituted in connection with such appointment or sufferance;

l. The placement of any lien upon the Premises or any improvements thereto which is not discharged of record within ninety (90) days, or any levy under any such lien;

m. The occurrence of an event of default under any other subconcession agreement between Master Concessionaire and Subconcessionaire at the Facility. In addition, Subconcessionaire hereby agrees that the occurrence of an Event of Default under this Agreement shall constitute an event of default under any other subconcession agreement between Master Concessionaire and Subconcessionaire at the Facility.

13.2 Remedies Upon Subconcessionaire's Default. Upon the occurrence of an event of default, as defined in Section 13.1 above, Master Concessionaire shall be entitled to any and all damages and remedies available at law or in equity. If the Subconcession Agreement terminates prior to the end of the Subconcession Term by reason of a Subconcessionaire Default, Master Concessionaire's damages shall be determined assuming that the Subconcession Term would have been extended for all available extension periods and expire July 6, 2105, but Master Concessionaire shall make reasonable efforts to mitigate its damages.

### 13.3 Further Provisions Regarding Default.

a. No waiver of any covenant or condition or the breach of any covenant or condition of this Agreement shall be taken to constitute a waiver of any subsequent breach of such covenant or condition or to justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition hereof, nor shall the acceptance by Master Concessionaire of any sums from Subconcessionaire at any time when Subconcessionaire is in default under any covenant or condition hereof be construed as a waiver of such default or of Master Concessionaire's right to terminate this Agreement on account of such default, nor shall any waiver or indulgence granted by Master Concessionaire to Subconcessionaire be taken as an estoppel against Master Concessionaire, it being expressly understood that Master Concessionaire may, at any time thereafter if such default continues, terminate this Agreement on account of such default in the manner hereinbefore provided.

b. The rights and remedies given to Master Concessionaire by this Agreement shall not be exclusive, and in addition thereto, Master Concessionaire shall have such other rights and may pursue such other remedies as are provided by law or in

equity. All such rights and remedies shall be deemed to be cumulative, and the exercise of one such right or remedy by Master Concessionaire shall not impair its standing to exercise any other right or remedy.

c. Subconcessionaire hereby waives trial by jury in any action, suit or proceeding related to, arising out of or in connection with the terms, conditions, and covenants of this Agreement.

14. Default by Master Concessionaire.

14.1 Events of Default. Any one of the following events shall constitute a Master Concessionaire default and after the expiration of the applicable cure periods an Event of Default hereunder:

a. The failure of Master Concessionaire to make any payment required to be made by Master Concessionaire hereunder when due as herein provided, which failure is not remedied within ten (10) days after receipt by Master Concessionaire of Subconcessionaire's written demand;

b. The failure of Master Concessionaire to keep, observe or perform any of the other covenants or agreements herein required to be kept, observed or performed by Master Concessionaire, and continued failure to observe or perform any such covenant or agreement after a period of thirty (30) days after receipt by Master Concessionaire of the Subconcessionaire's written demand, unless it is impracticable to remedy said default within thirty (30) days, in which case, Master Concessionaire must provide Subconcessionaire with an estimated time to cure the default and demonstrate that it has taken action to cure within said thirty (30) days;

c. The repeated failure (defined for this purpose as at least three (3) such failures within any consecutive twelve (12) month period) to keep, observe or perform any of the other covenants or agreements herein contained to be kept, observed or performed by Master Concessionaire (provided that notice of such failure shall have been given to Master Concessionaire, but whether or not Master Concessionaire shall have remedied any such failure within the time provided for in such notice);

d. Material breach by Master Concessionaire of any of the covenants or agreements required of Master Concessionaire under the terms of the Master Concession Agreement;

e. Commencement by Master Concessionaire or by any guarantor or surety of this Agreement, in any court pursuant to any statute of the United States or of any State, territory or government, of an insolvency or bankruptcy proceeding, including, without limitation, a proceeding for liquidation, reorganization or for the adjustment of its indebtedness;

f. Commencement of any insolvency or bankruptcy proceeding (including, without limitation, a proceeding for liquidation, reorganization or for adjustment of indebtedness) against Master Concessionaire or any guarantor or surety of this Agreement, if an order for relief is entered against such party and the same is not stayed or vacated within thirty (30) days after entry thereof, or if such party fails to secure a discharge of the proceedings within sixty (60) days after the filing thereof;

g. Insolvency of Master Concessionaire or any guarantor or surety of this Agreement;

h. The making by Master Concessionaire or by any guarantor or surety of this Agreement of an assignment for the benefit of its creditors or the filing of a petition for or the entering into of an arrangement with its creditors;

i. The appointment or sufferance of a receiver, trustee or custodian to take possession of all or substantially all of the property of Master Concessionaire or of any guarantor or surety of this Agreement, whether or not judicial proceedings are instituted in connection with such appointment or sufferance;

14.2 Remedies Upon Master Concessionaire's Default. Upon the occurrence of an Event of Default, as defined in Section 14.1 above, Subconcessionaire, in addition to any other rights it may have, shall, at its discretion, have the option to specifically perform the terms of this Agreement or enforce this Agreement by other available equitable remedies.

14.3 Further Provisions Regarding Default.

a. No waiver of any covenant or condition or of the breach of any covenant or condition of this Agreement shall be taken to constitute a waiver of any subsequent breach of such covenant or condition or to justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition hereof, nor shall any waiver or indulgence granted by Subconcessionaire to Master Concessionaire be taken as an estoppel against Subconcessionaire, it being expressly understood that Subconcessionaire may, at any time thereafter if such default continues, terminate this Agreement on account of such default in the manner hereinbefore provided.

b. The rights and remedies given to Subconcessionaire by this Agreement shall not be exclusive, and in addition thereto, Subconcessionaire shall have such other rights and may pursue such other remedies as are provided by law or in equity, including the right to obtain a temporary restraining order and temporary and permanent injunctions. All such rights and remedies shall be deemed to be cumulative, and the exercise of one such right or remedy by Master Concessionaire shall not impair its standing to exercise any other right or remedy.

14.4 Waiver of Jury Trial. Master Concessionaire hereby waives the right to trial by jury in any action, suit or proceeding related to, arising out of or in connection with the terms, conditions, and covenants of this Agreement.

15. Assignment.

15.1 Title. Subconcessionaire shall not sell, assign, or transfer this Agreement or any of its rights and privileges hereunder or permit any such sale, assignment or transfer to occur by operation of law, or contract for the performance of any of the services to be provided by it hereunder without the prior written approval of Master Concessionaire, which approval may be granted or withheld by Master Concessionaire in the exercise of its sole discretion.

15.2 Transfer of Ownership Interests. For purposes of Section 15.1 above, an assignment shall include, if Subconcessionaire is a corporation (except if Subconcessionaire is a corporation whose stock is publicly traded), any change in ownership of or power to vote a majority of the outstanding voting stock of Subconcessionaire from the owners of such stock or those controlling the power to vote such stock on the date of this Agreement, or if Subconcessionaire is a partnership, any transfer of an interest in the partnership which results in a change in control of such partnership. Notwithstanding the preceding sentence, shareholders of Subconcessionaire may transfer their shares to a trust the beneficiaries of which are their spouse or descendants, or, if an existing shareholder dies to that shareholder's heirs.

16. Waiver of Claims. Subconcessionaire hereby waives any and all claims it now has or may hereafter have against Master Concessionaire, the Authority and the City and against any member (including, without limitation, all members of the governing board of Authority, the Detroit City Council, and the advisory committees of each), officer, agent or employee of each, for any loss of anticipated profits caused by any suit or proceeding, attacking directly or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. Subconcessionaire further hereby waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Premises available to Subconcessionaire or by reason of any defects or deficiencies in the Premises or in the Facility or because of any interruption in any of the services thereto, including but not limited to power, gas, telephone, heating, air—conditioning or water supply systems, drainage or sewage systems, and Subconcessionaire hereby expressly releases Master Concessionaire, the Authority and the City, and their respective members (including, without limitation, all members of the governing board of Authority, the Detroit City Council, and the advisory committees of each), officers, agents, and employees from any and all demands, claims, actions, and causes of action arising from any of such causes.

17. Miscellaneous.

17.1 Execution of this Agreement. This Agreement and any amendments thereto shall be valid only when it is executed by duly authorized agents of each Party.

17.2 Collection of Prior Accounts Receivable. Any accounts receivables which have outstanding balances at the time this Agreement will not constitute Gross Receipts.

17.3 Applicable Law. This Agreement shall be governed and construed by the substantive laws of the State of Michigan. In the event any provision(s) of this Agreement shall be adjudged invalid by a court or arbitrator having competent jurisdiction over the Parties, the invalid provision(s) shall be deleted from this Agreement and this Agreement shall be construed as to give effect to the remaining provisions.

17.4 Resolution of Inconsistencies. If the terms and conditions of this Agreement are inconsistent with the Master Concession Agreement, the terms and conditions of the Master Concession Agreement shall prevail.

17.5 Notices. All notices provided for herein shall be in writing and shall be tendered by U.S. Certified Mail to the receiving party hereto at:

If to Master Concessionaire:

Ambassador Port Company  
12225 Stephens  
Warren, MI 48089

With a copy to:

Foley & Lardner LLP  
One Detroit Center  
500 Woodward Avenue, Suite 2700  
Detroit, MI 48226  
Attn: George Ash

If to Subconcessionaire:

Port of Detroit  
P. O. Box 180766  
Ecorse, MI 48218

With a copy to

Law Office of Donald A. DeLong, P.C.  
25899 W. 12 Mile Road, Suite 380  
Southfield, MI 48034  
Attn: Donald A. DeLong

In the case of a change in the mailing address of any party hereto, the party so changing its mailing address shall give notice thereof to the other party hereto, and in the absence of any such notice of change of mailing address executed in accordance with this paragraph, notice given to the respective aforestated mailing addresses shall be deemed sufficient for all purposes of this Agreement.

17.6 Captions. The captions appearing in this Agreement are for identification purposes only and shall not be construed as affecting in anyway the meaning of the provisions hereof.

17.7 Attachments. All attachments are an integral part of this Agreement and set forth the entire understanding of the parties in respect of the transactions contemplated. These documents supersede all prior agreements, arrangements, and understandings of the parties concerning this Agreement and the operation of the Facility.

17.8 Modifications to this Agreement. This Agreement shall not be amended, modified, or altered, in whole or in part, except by mutual written agreement of the Parties hereto, properly executed by the same. No evidence of any such amendment, modification, or alteration of this Agreement shall be received in any controversy arising out of or pursuant to same except if it is in writing and executed as aforespecified.

17.9 Successors and Assigns. This Agreement shall inure to the sole and exclusive benefit of and be of full and binding effect upon the parties hereto and their respective successors and assigns. Nothing set forth in this Agreement, expressed, implied, or otherwise, is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto, and their respective successors and assigns, any right, remedy, benefit, cause of action, and/or chose in action under or by reason of this Agreement.

17.10 Force Majeure. Neither Subconcessionaire nor Master Concessionaire shall be liable for its failure to perform in whole or in part due to contingencies which have a material effect on its contractual performance, including, but not limited to, strikes, riots, war, fire, acts of God, compliance with any law, regulation, or order, whether valid or invalid of any other governmental body or any instrumentality thereof, whether now existing or hereafter created.

17.11 Dispute Resolution Procedures. All disputes arising under this Agreement shall be resolved pursuant to the procedures set forth in this paragraph 17.11 unless otherwise agreed by the parties in writing.

a. Nothing in this paragraph shall be construed as limiting or delaying Master Concessionaire's or Subconcessionaire's right to seek injunctive relief from a court.

b. Except as set forth in subparagraph (a), neither Party shall initiate litigation under this Agreement without first following the dispute resolution procedure set forth herein.

c. In the event of a dispute arising under this Agreement, the aggrieved Party shall provide the other Party with written notice of a dispute. The Parties agree to negotiate in good faith for a period of ten (10) Business Days following receipt of the notice of a dispute.

d. If the Parties are unable to resolve the dispute(s) through good faith negotiations, then the Parties agree to submit the dispute to non-binding mediation with a third-Party mediator to be mutually agreed upon by the Parties. Each Party agrees to pay one half of the mediator's costs and fees. Five (5) days prior to the initial

mediation session, each Party shall submit a written summary of its position regarding the dispute(s) to the mediator and the other Party. The mediation session(s) shall take place in the City, state of Michigan. If by the end of the mediation session, the Parties are not able to come to an accord, each party shall submit to the mediator a proposed final solution to the dispute. The mediator shall select the proposed solution that most closely represents the proper outcome based on the mediator's application of the terms and conditions of this Agreement to the facts and circumstances at issue. If the Parties are not able to reach an accord, the mediator shall not be entitled to modify either proposed solution offered by the Parties. The parties agree that in any litigation, the proposed solution selected by the mediator shall be presumptively correct absent gross negligence or bad faith on the part of the mediator or the existence of material facts not known to the Parties and presented to the mediator at the time of the mediation.

e. If the Parties are unable to resolve the dispute(s) within thirty (30) days of the initial mediation session, then either Party may initiate litigation. The Federal District Court for the Eastern District of Michigan and the Circuit Court for the County of Macomb shall be the exclusive venues for litigating disputes arising under this Agreement. Each Party agrees to submit to the personal jurisdiction of the Federal District Court for the Eastern District of Michigan and/or the Circuit Court for the County of Macomb.

f. The Master Concession Agreement provides the Master Concessionaire with a dispute resolution process that allows the Master Concessionaire to require that the Port Authority submit to mediation in resolving disputes. Upon the request of and at the expense of the Subconcessionaire, the Master Concessionaire shall permit the Subconcessionaire to call for and participate in an arbitration involving the Port Authority under the Master Concession Agreement.

17.12 Remedies Cumulative. All remedies hereinbefore and hereinafter conferred on Subconcessionaire and Master Concessionaire shall be deemed cumulative, and no one remedy shall be exclusive of another or of any other remedy conferred by law.

17.13 Perpetuities Savings Clause. If any right of Subconcessionaire or Master Concessionaire provided for in this Agreement would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in or the suspension of the power of alienation of property, then such right or option shall be exercisable only during the period which shall end twenty-one years less one day after the date of death of the last survivor of the descendants living on the date of this Agreement of Joseph P. Kennedy, father of President John F. Kennedy and Ambassador to the Court of Saint James, but if any such rights, privileges and options shall be or become valid under Applicable Law for a period subsequent to the twenty-first anniversary of the death of the last such survivor (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges and options for a period in gross, exceeding the period for which such rights, privileges and options are hereinabove stated to extend and be valid), then

such rights, privileges or options shall not terminate as aforesaid but shall extend to and continue in effect, but only if such non-termination and extension shall then be valid under Applicable Law until such time as the same shall under Applicable Law cease to be valid.

17.14 Expenses of Enforcement. Master Concessionaire or Subconcessionaire shall pay all reasonable attorneys' fees and actual expenses incurred by the other Party in enforcing any provisions of this Agreement, caused by a defaulting Party hereunder, upon written demand therefore made by the non-defaulting Party.

17.15 Remedies; Attorneys' Fees and Costs. In the event that any proceedings at law or in equity arise hereunder or in connection herewith (including any appellate proceedings or bankruptcy proceedings), the prevailing party shall be awarded costs, attorneys' fees and reasonable expert witness fees incurred in connection with such proceedings.

17.16 Regulations of Master Concessionaire and Subconcessionaire. The rights and privileges granted to Subconcessionaire hereunder and the occupancy and use by Subconcessionaire of the Premises shall at all times be subject to all applicable provisions of the Master Concession Agreement as the same may be amended from time to time.

17.17 Interest. Any sums payable to Master Concessionaire by Subconcessionaire under any provisions of this Agreement which are not paid when due shall bear interest at the Default Rate until paid.

17.18 Other Miscellaneous Provisions.

a. Subconcessionaire and its employees shall promptly observe and comply with applicable provisions of all Applicable Laws which govern or apply to Subconcessionaire or to its operations hereunder.

b. Neither party is authorized to act as the other party's agent hereunder and shall have no authority, express or implied, to act for or bind the other party and nothing contained in this Agreement shall be deemed or construed by Master Concessionaire or Subconcessionaire or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make Master Concessionaire the joint employer of any employee of Subconcessionaire, or Subconcessionaire the joint employer of any employee of Master Concessionaire.

c. Time is expressed to be the essence of this Agreement.

d. If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contained herein.

e. Except as otherwise provided herein, if certain action may be taken only with the consent or approval of Master Concessionaire or Subconcessionaire, or if a determination or judgment is to be made by Master Concessionaire or Subconcessionaire,



such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of Master Concessionaire or Subconcessionaire.

f. Subconcessionaire will have the right to participate in the discussion or negotiation of changes to the Master Concession Agreement, the Facility Operating Standard the Operating Procedures, the Pricing Schedule and the Use Fees, but only in those cases where the Subconcessionaire can demonstrate that the proposed change impedes the Subconcessionaire's ability to perform Stevedoring Operations, or prevents the Subconcessionaire from making a profit. This right to participate does not provide the Subconcessionaire with a voting right, only with the assurances that its views will be considered.

17.19 Subconcessionaire's Consent to Subconcession Agreement:  
Subconcessionaire's Obligations to Subconcessionaire. Subconcessionaire acknowledges that (i) it has received a copy of the Master Concession Agreement, (ii) it has reviewed the same prior to execution of this Agreement, (iii) it agrees to be bound by the terms and conditions of the Master Concession Agreement, as that document may be amended from time to time; and (iv) pursuant to the terms of the Master Concession Agreement, this Subconcession Agreement shall not become effective unless and until it has been approved by the Authority.

17.20 Confidentiality.

a. The parties hereto and their employees, directors, officers, and agents shall keep confidential the terms of this Agreement and shall disclose the terms of this Agreement only to the extent required by applicable law, and to those who (a) reasonably require such information as a condition of doing business and (b) who likewise enter into written agreements covenanting to keep such information confidential. Master Concessionaire shall be entitled to disclose the terms of this Agreement to the Authority and to its lenders in connection with the financing of any improvements at the Port Property, and to other lenders, purchasers of the Premises and others with a legitimate business reason to know, but only after the recipient signs a confidentiality agreement agreeing to be bound by key provisions of this section 17.20.

b. In connection with its duties under this Agreement, Subconcessionaire will disclose and make available to Master Concessionaire and the Authority certain information which will include confidential and proprietary business, financial, technical, operational and management information (collectively "Confidential Information"). Notwithstanding anything in this Agreement to the contrary, Subconcessionaire will only disclose the Confidential Information to Master Concessionaire and the Authority under the conditions described in this section 17.20. Master Concessionaire and the Authority acknowledge that Confidential Information disclosed or made available by Subconcessionaire will include confidential and proprietary information, and Master Concessionaire and the Authority agree not to disclose such Confidential Information to others outside each of their organizations except to their consultants or agents. Master Concessionaire and the Authority further

agree to limit disclosure of Confidential Information to only those employees, consultant and agents ("Permitted Parties") who have a need to know the same for the sole purpose stated above and who have been advised of and agree to the obligations of the restrictions on those persons receiving Confidential Information as set forth herein. Master Concessionaire and the Authority agree that they will not use, and will use their best efforts to prevent Permitted Parties from using any Confidential Information except for the sole purpose set forth above, including, but not limited to using the Confidential Information to compete in any way with Subconcessionaire, or to assist any other party to compete with Subconcessionaire. Nothing in this Agreement nor any act or omission by either party in compliance with this Agreement shall be construed to grant any rights in or licenses under any present or future Confidential Information disclosed pursuant to this Agreement, or any present or future patent. Master Concessionaire and the Authority agree that the violation, breach or threatened violation or breach of the agreements contained in this section 17.20 may cause irreparable damage to the other party which is difficult to compute and that an award of any sum of damages may not be adequate relief; and, therefore they agree that in the event of any actual or threatened violation of the agreements contained in this section 17.20 shall give Subconcessionaire the right to injunctive and other equitable relief against the party violating or threatening violation of this section 17.20.

c. In order for the Subconcessionaire to receive the protection of section 17.20b above, any information claimed to be Confidential Information must be in writing suitably marked with an appropriate legend. Any Confidential Information provided orally or visually must, within thirty (30) days of disclosure also be provided in a suitably marked written format.

d. Confidential Information shall not include information that (i) is in the possession of the Master Concessionaire or the Authority prior to its receipt of such information from the Subconcessionaire, (ii) is or becomes publicly available other than as a result of a breach of this Agreement by the Master Concessionaire, or (iii) is or can be independently acquired or developed by the Master Concessionaire without violating any of its obligations under this Agreement.

e. In the event that Master Concessionaire receives a request to disclose all or part of any Confidential Information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee, such disclosure by Master Concessionaire shall not constitute a violation of this Agreement provided that Master Concessionaire (a) promptly notifies the Subconcessionaire of the existence, terms and circumstances surrounding such request, (b) consults with the Subconcessionaire on the advisability of taking available legal steps to resist or narrow such request, and (c) if disclosure of such Confidential Information is required or deemed advisable, exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information to be disclosed which the Subconcessionaire designates.

17.21 Entire Agreement. This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

MASTER CONCESSIONAIRE:



By: DAN STENGER  
Its: DIRECTOR

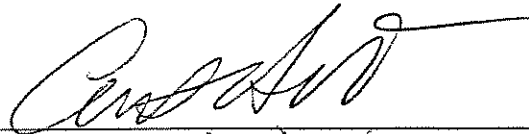
SUBCONCESSIONAIRE:



By: Daniel V. Deane  
Its: President

THIS SUBCONCESSION AGREEMENT IS APPROVED BY:

PORT AUTHORITY:



By: EXECUTIVE DIRECTOR

STATE OF MICHIGAN

COUNTY OF Macomb, to-wit:

The foregoing Agreement was acknowledged before me by DAN STAMPER, who holds the position of DIRECTOR at AMBERSON PORT CO., a Michigan corporation, for and on behalf of said corporation, this 24 day of JUNE, 2005.

My commission expires: May 09, 2007

Briana N. Liller  
NOTARY PUBLIC

BRIANA N. LILLER  
NOTARY PUBLIC MACOMB CO., MI  
MY COMMISSION EXPIRES May 9, 2007

STATE OF MICHIGAN

COUNTY OF Wayne, to-wit:

The foregoing Agreement was acknowledged before me by Curtis Hertel, who holds the position of \_\_\_\_\_ at the \_\_\_\_\_ Authority, a Michigan corporation, for and on behalf of said corporation, this 7 day of July, 2005.

My commission expires: \_\_\_\_\_

Lynn K. Nelson  
NOTARY PUBLIC  
LYNN K. NELSON  
NOTARY PUBLIC MACOMB CO., MI  
MY COMMISSION EXPIRES  
MARCH 17, 2007

STATE OF MICHIGAN

COUNTY OF Macomb, to-wit:

The foregoing Agreement was acknowledged before me by Daniel J. Deane, who holds the position of President at Nicholson Terminal & Dock Company, a Michigan corporation, for and on behalf of said corporation, this 54th day of June, 2005.

My commission expires: May 09, 2007

Briana N. Liller  
NOTARY PUBLIC

BRIANA N. LILLER  
NOTARY PUBLIC MACOMB CO., MI  
MY COMMISSION EXPIRES May 9, 2007

## EXHIBIT A

### PARCEL I:

All that portion of Private Claims 47 and 583 lying South of the South line of Jefferson Avenue, City of Detroit, Wayne County, Michigan.

### PARCEL II:

All that portion of Private Claim 583 lying South of the South Line of the Wabash Railway right of way and North of the North line of Jefferson Avenue, excepting therefrom a parcel 25 feet square on the Northwest corner of said parcel owned by United States of America, and Lots 15, 16, 17, 18, 21 and 22 and vacated alley adjoining Lots 15 through 10, Subdivision of Private Claim 563 for heirs of J. B. Campau recorded in Liber 1 on Pages 94 and 95 of Plats, Wayne County Records.

### PARCEL III:

The West 555.88 feet of Private Claim 77, fronting on Jefferson Avenue lying South of the South line of Jefferson Avenue.

### PARCEL IV:

Lots 1 to 11 inclusive, subdivision of Private Claim 583 for heirs of J. B. Campau, as recorded in Liber 1 on Pages 94 and 95 of Plats, Wayne County Records.

### PARCEL V:

Also, that part of Lots 6 to 10 inclusive of Riverside Subdivision described as follows: South 1.22 feet on West line being South 23.72 feet on East line of Lot 10, South 23.72 feet on West line being South 56.45 feet on East line of Lot 9, South 56.45 feet on West line being South 102.87 feet on East line of Lot 8 and Lots 6 and 7 excepting triangular part of Lot 7 being North 15.83 feet on West line and being West 6.20 feet on North line, also East 43.80 feet of West 193.10 feet on South line being East 31.83 feet of West 182.62 feet on North line of vacated alley lying North and adjacent said lots, also West 1/2 of vacated North and South alley excepting 220.21 feet thereof. Riverside Liber 1, Page 191, of Plats, Wayne County Records Also part of Private Claim 47, City of Detroit, being a strip of land 20 feet wide lying West and adjacent West line of said North and South alley measuring 457.33 feet Northerly along center line said strip from North line of East and West alley to point of curve; thence continuing along center line of said strip on a 330 feet radius curve to left on 150 feet; thence continuing along center line of said strip on a 135 feet radius curve to left to Intersection of South line Wabash Right of Way Railroad with East line of McKinstry Avenue, which strip is to be used for railway purposes and subject to the right of the adjoining owners to share in such use.

Ward 14, Item 000004-12, Parcels I, III, IV; 4461 W. Jefferson

Ward 14, Item 000017, Parcel II; 4300 W. Jefferson

Ward 14, Item 000014, Parcel V; 4500 W. Jefferson

EXHIBIT B

LEGAL DESCRIPTION  
CITY OF ECORSE

136 008-99-0013-000  
NICHOLSON TER DOCK CO  
BOX 18066

RIVER ROUGE: MI 48218

042H THAT PART OF PRIVATE CLAIM 4 IBED AS  
BEGINNING AT A POINT DIST 56D 43M 30SEC E 956.36  
FT ALONG T NLY LINE OF PC 42 AND S 32D 04M 0  
730.53 FT AND S 55D 06M 30SEC E 5 FROM THE NW  
CORNER OF PC 42 AND PROCEEDING TH S 32D 04M  
03SEC W 3 T TH S 55D 08M 25SEC E 547.60 FT 34D 51M  
35SEC W 15.0 FT TH S 55D EC E 259.29 FT TH S 32D  
06M 11SEC 242.43 FT TH S 32D 03M 42 SEC W 22 TH S  
55D 08M 25SEC E 1300.61 FT US HARBOR LINE TH  
ALONG SAID LINE 49M 35SEC E 265.55 FT AND N 25D 1  
57SEC E 424.65 FT TH N 55D 06M 30 301.27 FT TO THE  
POB 29.27 ACRES

LEGAL DESCRIPTION  
CITY OF ECORSE

136 008-99-0012-000  
NICHOLSON TER DOCK CO  
BOX 18066

RIVER ROUGE: MI 48218

042G 042C2 THAT PT OF PC42 DESC AT A PTE ON THE  
WLY LINE OF THE MI CENTRAL R. R. ROW DIST  
S56DEG 43M 06.35FT. ALONG THE NLY LINE OF PC4  
S32DEG 04M 03S, W 759.0FT FROM THE OF PC 42 AND  
PROC TH S32DEG 04M ALONG SAID WLY LINE 665.33FT  
TH S 6M 44S W 510 38FT TH S61DEG 38M 5 335.91FT.  
TH N31DEG 16M 20S E 1567 H N40DEG 42M 13S E 60  
OFT THE S59D 55S E 510.17 FT TH S32DEG 04M 03S  
8FT TH S55DEG OBM 04S E 40.05FT T POB 15.71AC



LEGAL DESCRIPTION  
CITY OF ECORSE

136 008-99-0004-003  
NICHOLSON TER DOCK CO  
BOX 18066  
RIVER ROUGE: MI 48218

042C1A1A3 PT OF PC 42 BEG S56DEG 4 E 906.35FT  
AND S32 DEG 04M 03S W 7 FROM NWLY COR OF PC 42  
TH N55DEG W 40.05FT TH N32DEG 04M 03S E 13 TH  
S15DEG 49M 03S W 142.96 FT POB

LEGAL DESCRIPTION  
CITY OF ECORSE

136 008-99-0014-000  
NICHOLSON TER DOCK CO  
BOX 18066

RIVER ROUGE: MI 48218

042J2 PT OF P.C. 42 BEG S49DEG 17M 95 10FT AND  
N5DEG 54M 20S E 35.54 NELY ALONG A CURVE CONC  
TO E RAD FT ARC 496.86 FT AND N31DEG 15M 10 361  
98FT AND N31DEG 16M 20S E 264 AND S55DEG 04M  
20S E 27.06FT AND 16M 20S W 1567.40FT AND N61DEG  
38 335.91 FT AND N78DEG 46M 44S E 22 FROM SWLY  
CDR OF PC 42 TH N78DEG E 260.55FT TH WLY ALONG  
A CURVE TO N. RAD 221FT ARC 171.45FT TH S8 M 50S  
W 98 FT POB 0.11 AC

**Exhibit C**

## List of Potential Subconcession Improvements

1. Replace and/ or repair missing or damaged pilings
2. Re-pave the premises
3. Remove existing signage and install Subconcessionaire's signage
4. Install new fencing around entire Facility
5. Remove all brush and trees.
6. Repair all damage to existing warehouse on the Facility.
7. Remove all oil drums located at the Facility, and dispose of the drums and contents in an approved manner, and conduct such testing and remediation as may be required to assure Subconcessionaire that there has been no leakage or contamination resulting from the storage of the oil drums at the Facility.
8. Demolish and remove all gantry cranes located at the Facility.